

# Representation of Clients in Retirement Homes:

## The Regulatory Framework

### Residential Tenancies Act and Retirement Homes Act

Judith Wahl  
Advocacy Centre for the Elderly

[www.ancelaw.ca](http://www.ancelaw.ca)  
[wahlj@lao.on.ca](mailto:wahlj@lao.on.ca)

# Advocacy Centre for The Elderly

- ▶ 2 Carlton Street, Suite 701  
Toronto, Ontario  
M5B 1J3
- ▶ Tel – 416–598–2656
- ▶ Fax – 416–598–7924
- ▶ Email [wahlj@lao.on.ca](mailto:wahlj@lao.on.ca)
- ▶ Website \* [www.ancelaw.ca](http://www.ancelaw.ca)
- ▶ ACE Newsletter list (Email twice a year)  
Send email to [gillardt@lao.on.ca](mailto:gillardt@lao.on.ca) with  
ACE NEWSLETTER in subject line



# The Regulatory Framework that affects Retirement Homes in Ontario

# Regulatory Framework

## – Both RTA and RHA

- ▶ *Residential Tenancies Act* – RTA
  - Retirement homes that meet the definition of “care home” under RTA are tenancies
- ▶ *Retirement Homes Act* – RHA
  - Retirement Homes that meet definition of “retirement home” under RHA are also covered by that legislation
  - Only part proclaimed – phased in proclamation in stages to January 2014 – licensing required by July 2012

# Municipal Bylaws

- ▶ Some municipalities in Ontario have by-laws governing certain types of retirement homes. The by-laws define the type of home they regulate.
- ▶ Municipalities describe the homes that are regulated as "personal care" homes, "second-level lodging" homes, "residential care facilities".
- ▶ Some of the larger municipalities that have care home by-laws include Windsor, Hamilton, Ottawa, and the old cities of Etobicoke and Toronto (as they were defined prior to the Toronto amalgamation).
- ▶ Bylaws focus on regulation of basic health and safety issues.
- ▶ Old City of Toronto by-law sets basic standards of cleanliness, prescribes the size of bedrooms, prescribes how often clean linen should be available, and sets basic nutrition standards and minimum staffing requirements.
- ▶ Municipalities considering whether they should amend bylaws as it applies to retirement homes as captured by RHA

# ▶ Care homes under RTA

# Problems with Care Home Provisions in RTA – Few Cases yet proceeding to LTB

- ▶ Some landlords of CH either don't know or ignore that they are operating a tenancy or do not comply with all provisions of the RTA even if they claim they do
  - Examples of non compliance with RTA
    - Deficient tenancy agreements or No tenancy agreements
    - No CHIPS or deficient CHIPS
    - Differential increases on care service charges on CHIP to tenants with lower rents – done probably because of effects of rent control which prohibits increases to rent more than once a year – however this is a “penalty” and discriminatory practice and is prohibited
    - Landlords refuse to let tenants of care homes return to their accommodation post a major health event (admission to hospital) based on landlord's own evaluation of tenant's risk and without the landlord taking appropriate application to Landlord and Tenant Board

# Care Home Problems under RTA

- ▶ One of Biggest problems is that tenants don't know that they are "tenants" under RTA
  - May not know that landlord required to provide Care Home Information Package (and what info needs to be part of that)
  - Don't know about CHIP requirements – in one home where no CHIP, tenants asked for care service charges list after being charged extraordinary rates for simple services – they were given list of charges for drinks at the bar and other hospitality items
  - May not know that can't be evicted just because of care needs if are able to get assistance from someone other than landlord
  - May not know that can access external care services because although not blocked by landlord it is discouraged in other ways



# Problems with Care Home Provisions in RTA – Few Cases yet proceeding to LTB

- ▶ People think RH/ care homes are “private nursing homes” and don’t know remedies or where to turn for help
- ▶ Clients are afraid/ feel vulnerable and feel at risk in challenging or exercising their rights
- ▶ May have been given incorrect information on remedies from government funded/ supported information lines as well as lawyers unfamiliar with or without full understanding of RTA application

# With intro of RHA...

- ▶ Will likely be confusion
  - Is the place a “retirement home” under RHA ? Supportive housing that gets some funding from MOHLTC is not
  - How do RTA and RHA intersect?
  - What information will be distributed by Retirement Home Regulatory Authority/ Seniors Secretariat/ Retirement home operators organizations/ other groups to educate tenants and their families and the landlord–operators?  
Possible conflicting messages
- ▶ Likely same reluctance of RH tenants to speak up or to seek remedies available under RHA

## *Residential Tenancies Act, 2006* continues to apply to Retirement Homes under RHA

**RHA 52.** If a retirement home also falls within the meaning of a care home as defined in the *Residential Tenancies Act, 2006*, nothing in this Act (RHA) overrides or affects the provisions of the *Residential Tenancies Act, 2006* that would otherwise apply with respect to the home as a care home.

**RHA 119.** Nothing in this Act overrides or affects any rights or obligations that a tenant or landlord has under the *Residential Tenancies Act, 2006*.  
2010, c. 11, s. 119.

# RTA Law and Procedure


- ▶ Everything in the main part of the RTA applies to Care homes except when there is a conflict with the care home sections

3. (1) This Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary. 2006, c. 17, s. 3 (1).

## **Conflicts, care homes**

(2) In interpreting a provision of this Act with regard to a care home, if a provision in Part IX conflicts with a provision in another Part of this Act, the provision in Part IX applies. 2006, c. 17, s. 3 (2).

# What is a Care Home under RTA ?

- ▶ Retirement homes
  - ▶ Supportive housing
  - ▶ Lodges
  - ▶ Assisted living
  - ▶ Personal care homes
  - ▶ Residential care homes
- 
- Broader than retirement homes
- 

# What really is a Care Home?

## RTA

2. (1) In this Act,

“care home” means a residential complex that is occupied or intended to be occupied by persons for the purpose of receiving care services, whether or not receiving the services is the primary purpose of the occupancy; (“maison de soins”)

“care services” means, subject to the regulations, health care services, rehabilitative or therapeutic services or services that provide assistance with the activities of daily living; (“services en matière de soins”)

# RTA Reg – Definition of Care Home

## Definition of “care home”

1. (1) One or more rental units that form part of a residential complex are care homes for the purpose of the definition of “care home” in subsection 2 (1) of the Act if the rental units are occupied or intended to be occupied by persons for the purpose of receiving care services, whether or not receiving the care services is the primary purpose of the occupancy. O. Reg. 516/06, s. 1 (1).
- (2) Subsection (1) applies even if a third party rents the rental unit from the landlord and provides or arranges to provide both the rental unit and care services to the tenant. O. Reg. 516/06, s. 1 (2).

See also Grenadier Case– definition in part came out of that case

# RTA Reg– Care Services s2 (1)

2. (1) As part of health care services, rehabilitative services, therapeutic services and services that provide assistance with the activities of daily living, the following are included in the definition of “care services” in subsection 2 (1) of the Act:

1. Nursing care.
2. Administration and supervision of medication prescribed by a medical doctor.
3. Assistance with feeding.
4. Bathing assistance.
5. Incontinence care.
6. Dressing assistance.
7. Assistance with personal hygiene.
8. Ambulatory assistance.
9. Personal emergency response services. O. Reg. 516/06, s. 2 (1)

.




# RTA Reg Care Services

(2) The following services are included in the definition of “care services” in subsection 2 (1) of the Act if they are provided along with any service set out in subsection (1):

1. Recreational or social activities.
2. Housekeeping.
3. Laundry services.
4. Assistance with transportation. O. Reg. 516/06, s. 2 (2).

# What CH Landlords define as Care services (and may not be)

- ▶ Taxi service
  - ▶ Nursing – landlords’ very broad definition of nursing services – not necessarily a regulated health professional or a trained PSW
  - ▶ Memory classes offered as education programme by Toronto Board of Education
  - ▶ Foot care – not necessarily podiatry services but may include “spa” type services
  - ▶ Quarterly health or nursing checks – but ask for details about these – may not be what you think – in Grenadier case these were quarterly sales meetings of “nurse” with tenants to sell services
  - ▶ What they deliver may not be exactly what you think
- 

# What's Not a Care Home

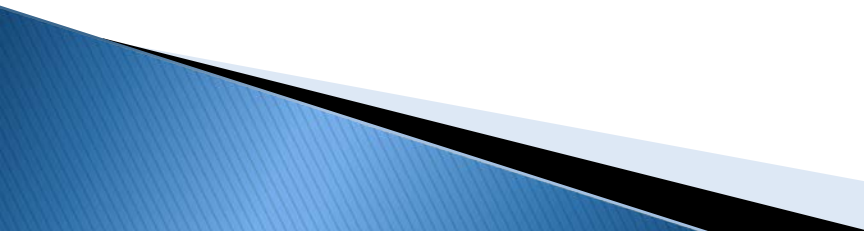
- ▶ Number of exemptions of all types of rental accommodation from RTA
- ▶ Examples of exemptions related to accommodation with care services
  - Respite care in a Care Home
  - Rehabilitative or therapeutic services where
    - (A) the period of occupancy will be of a specified duration, or
    - (B) the occupancy will terminate when the objectives of the services have been met or will not be met, and
    - (ii) the living accommodation is intended to be provided for no more than a one-year period;

# What's not a Care Home

- ▶ Hospitals
- ▶ Homes for the Aged (old term)
- ▶ Nursing Homes (old term)
- ▶ Charitable Homes for the Aged (old term)
- ▶ Long Term Care Homes (new term)
- ▶ Alternative Level of Care (ALC) units in LTC properties and RHs (these only are exempt if approved by MOHLTC and under supervision of MOHLTC)

Retirement homes are NOT “Private nursing Homes”

# How can you determine if a place is a Care home or a Long Term Care Home?

- ▶ Use Long Term care Home finder on MOHLTC website – if in list– LTC home – if not, likely a care home
  - ▶ Look on ORCA website in their list– but lists only ORCA members
  - ▶ Don't bother asking the operator/landlord
  - ▶ Use your smarts using the RTA
- 

# What is a Care Home and what is a Retirement Home and are they the same?

- ▶ What are “Care homes” that the RTA applies to?
- ▶ What are “Retirement homes” that the RHA applies to?
  
- ▶ NOT exactly the same
- ▶ Don’t get confused by different language in two acts ( RTA refers to tenants and RHA refers to residents)
- ▶ Retirement homes ARE care homes but care homes are more than retirement homes

# Difference between Retirement Homes and LTC Homes

- ▶ Admission/ entering
  - Retirement Home is a Tenancy therefore no specific care needs requirements to be able to rent but LL may refuse to rent if prospective tenants requires care over level available at retirement home
  - LTC– Must have needs assessed by CCAC and found eligible, and agreement of specific LTC Home to accept resident
- ▶ Monitoring Care Needs
  - Retirement Home Tenancy – tenant is responsible for self or for contracting for services for self if needs change (But how will requirements for care plans fit into this post Jan 1, 2013??)
  - LTC – responsibility of LTC home automatically

# Differences between Retirement Homes and LTC homes

- ▶ Meeting On-Going Needs
  - Retirement Home Tenancy – tenant is responsible for self or for contracting for services for self if needs change (subject to care plans issue post Jan 2013)
  - LTC – responsibility of home automatically
- ▶ Leaving
  - Retirement Home Tenancy – 30 days notice by tenant, other notice periods from landlord as for other types of tenancies apply to care home tenancies or grounds for eviction and special CH ground of eviction re care needs (RTA s 148)
  - LTC – if care needs increase; temp move for care to hospital etc; cant be evicted for non payment



# What is a Retirement Home under RHA?

- S. 1 “retirement home” means a residential complex or the part of a residential complex,
- (a) that is **occupied primarily by persons who are 65 years of age or older,**
  - (b) that is occupied or intended to be occupied by at least the **prescribed number of persons who are not related to the operator of the home,** and
  - (c) where the operator of the home **makes at least two care services available, directly or indirectly, to the residents,**
- but does not include:..

**Prescribed number in (b) is SIX**

# RHA O. Reg 165/11 – definition of Retirement home

## Retirement home

2. (1) For the purposes of clause (b) of the definition of “retirement home” in subsection 2 (1) of the Act, a residential complex or the part of a residential complex that is a retirement home must be **occupied or be intended to be occupied by at least six persons** who are not related to the operator of the home. O. Reg. 165/11, s. 2 (1).

...

(3) A statement in this section or the definition of “retirement home” in subsection 2 (1) of the Act that part of a premises is or is not a retirement home applies only to that part of the premises. O. Reg. 165/11, s. 2 (3).

# What's not a Retirement Home

## RHA s 1(d) and O.Reg 165/11 s.2(2)

*Retirement home* ..... does not include,  
(d) premises or parts of premises that are **governed by or funded under,**

...  
(iii) the *Homes for Special Care Act*,

...  
(v) the *Long-Term Care Homes Act, 2007*,  
(vi) the *Ministry of Community and Social Services Act*,

...  
(viii) the *Private Hospitals Act*,  
(ix) the *Public Hospitals Act*, or  
(x) the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*,

(e) premises at which emergency hostel services are provided under the *Ontario Works Act, 1997*, or

(f) the other premises that are prescribed;

O.Reg s2(2)The following premises are prescribed for the purposes of clause (f) of the definition of “retirement home” in subsection 2 (1) of the Act as not being retirement homes: premises, or parts of premises, at which a **supportive housing program** or a residential treatment program is provided and funded under the *Home Care and Community Services Act, 1994*, the *Local Health System Integration Act, 2006* or the *Ministry of Health and Long-Term Care Act*.

# Care Services under RHA s.1

“care service” means,

- (a) a prescribed health care service provided by a member of a College as defined in the *Regulated Health Professions Act, 1991*,
  - (b) administration of a drug, as defined in the *Drug and Pharmacies Regulation Act*, or another substance,
  - (c) assistance with feeding,
  - (d) assistance with bathing,
  - (e) continence care,
  - (f) assistance with dressing,
  - (g) assistance with personal hygiene,
  - (h) assistance with ambulation,
  - (i) provision of a meal, or
  - (j) any other service prescribed as a care service,
- but does not include any service that is prescribed as not being a care service;

O. Reg. 165/11, s. 1.

## Care services

1. Services provided under the *Homemakers and Nurses Services Act* are not care services for the purposes of the Act.

# Retirement Homes Act

- ▶ Definition of retirement home not exactly same as care home
- ▶ Some care homes will not be retirement homes because of # of tenant (less than 6 people) or age of tenants (under 65) or types of services to be delivered
- ▶ All retirement homes should be care homes subject to RTA – we cant yet think of an exception
- ▶ Supportive housing will be exempt
- ▶ Domiciliary Hostels even if all occupied by people 65 plus will be exempt
- ▶ In some complexes some units may be retirement home accommodation and some will not

# How will you be able to determine if a place is a “retirement home” under RHA

- ▶ Retirement homes require LICENCES and there will be a public registry
- ▶ This will not be useful short term because of time it will take to get places to get licences so need to look closely at the definition
- ▶ Registers required under RHA in section 106 and in O.Reg General s.62

# Registers RHA s. 106

106. (1) The Registrar shall establish and maintain one or more registers, which shall contain the following information at a minimum, subject to the rules, if any, that are prescribed:
1. For each application for a licence,
    - i. the name and address of the applicant,
    - ii. the name and address of the retirement home,
    - iii. a statement whether there is an automatic sprinkler in the room of each resident of the retirement home or elsewhere in the home and, if so, information about the sprinklers,
    - iv. the number of residents that the retirement home can accommodate,
    - v. the care services that the applicant, when licensed, will make available to the residents of the retirement home, and
    - vi. information about the status of the application, including any decision that the Registrar has made with respect to the application and information about any appeals from that decision.

# Registers RHA s. 106

2. For each licence,
  - i. the name and address of the licensee,
  - ii. the name and address of the retirement home,
  - iii. **a statement whether there is an automatic sprinkler in the room of each resident of the retirement home or elsewhere in the home and, if so, information about the sprinklers,**
  - iv. **the number of residents** that the retirement home can accommodate,
  - v. **the care services that the applicant, when licensed, will make available to the residents** of the retirement home,
  - vi. **the class of licence, if any, issued to the licensee,**
  - vii. the conditions, if any, imposed on the licence by the Registrar,
  - viii. **a summary of each inspection report** prepared with respect to the retirement home, subject to section 114,
  - ix. information about any orders issued by the Registrar to the licensee, including information about appeals from those orders, subject to section 114,
  - x. information about any conviction of the licensee or any of its directors or officers for an offence under this Act, including the penalty imposed on conviction, and
  - xi. information about any termination, revocation or surrender of the licence.
3. Any other information required by the regulations.

## Available to the public

(2) The Registrar shall make the information in the registers available for public inspection.



- ▶ **Landlord and Tenant 101**
  - ▶ **Key RTA provisions**
- 

# Fundamental Care Home Tenancy Documents under RTA

- ▶ Landlords MUST provide
  - Written Tenancy agreements and
  - Care Home Information Packages (CHIPs)

# Tenancy Agreements

## Agreement required

139. (1) There shall be a written tenancy agreement relating to the tenancy of every tenant in a care home. 2006, c. 17, s. 139 (1).

## Contents of agreement

(2) The agreement shall set out what has been agreed to with respect to care services and meals and the charges for them. 2006, c. 17, s. 139 (2).

## Compliance

(3) If, on application by a tenant, the Board determines that subsection (1) or (2) has not been complied with, the Board may make an order for an abatement of rent. 2006, c. 17, s. 139 (3).

# Problems with Tenancy Agreements

- ▶ Doesn't exist
- ▶ Mixes rent and care costs– MUST be split because of provisions in act as to when increases allowed in rent (once a year and possibly only by rent control rate) and services ( on a 90 day notice– can be more than once a year)
- ▶ Majority of costs in care portion and small amount in rent
- ▶ Fails to mention RTA
- ▶ Clauses that attempt to override RTA
- ▶ Clauses that attempt to override Health Care Consent Act and other decision making legislation
- ▶ Requirements for Guarantors and “responsible persons”
- ▶ Exculpatory clauses

# Right to Consult and Cancel

**Tenancy agreement: consultation, cancellation**

**Tenancy agreement: right to consult**

141. (1) Every tenancy agreement relating to the tenancy of a tenant in a care home shall contain a statement that the tenant has the right to consult a third party with respect to the agreement and to cancel the agreement within five days after the agreement has been entered into. 2006, c. 17, s. 141 (1).

**Cancellation**

(2) The tenant may cancel the tenancy agreement by written notice to the landlord within five days after entering into it. 2006, c. 17, s. 141 (2).

# The CHIP – Care Home Information Package

## Information to tenant

140. (1) Before entering into a tenancy agreement with a new tenant in a care home, the landlord shall give to the new tenant an information package containing the prescribed information. 2006, c. 17, s. 140 (1).


## Effect of non-compliance

(2) The landlord shall not give a notice of rent increase or a notice of increase of a charge for providing a care service or meals until after giving the required information package to the tenant. 2006, c. 17, s. 140 (2).

# CHIP contents

47. The information package referred to in section 140 of the Act must contain the following information:
1. List of the different types of accommodation provided and the alternative packages of care services and meals available as part of the total charge.
  2. Charges for the different types of accommodation and for the alternative packages of care services and meals.
  3. Minimum staffing levels and qualifications of staff.
  4. Details of the emergency response system, if any, or a statement that there is no emergency response system.
  5. List and fee schedule of the additional services and meals available from the landlord on a user pay basis.
  6. Internal procedures, if any, for dealing with complaints, including a statement as to whether tenants have any right of appeal from an initial decision, or a statement that there is no internal procedure for dealing with complaints. O. Reg. 516/06, s. 47.

# Where to find the CHIP

- ▶ Often doesn't exist in the obvious way
  - ▶ May be contained in advertising blurbs
  - ▶ May be across multiple documents
- 



# Things found and not found in Tenancy agreements and CHIPS

- ▶ Requirement for advance consent to health care
- ▶ “Rules” that conflict with RTA (such as on security of tenure)
- ▶ Statements that the place is not a care home
- ▶ Attempts to exempt from care home by agreement
- ▶ Pre consents to being moved within building and to other properties
- ▶ Non disclosure of care costs methods ( ie care charges that are done in 15 minutes increments and not being told what’s a care charge is like staff chatting in the hall)
- ▶ Care charges for watering plants, meal service, night checks
- ▶ No keys for the main doors
- ▶ Prohibitions on guests after certain hours or overnights
- ▶ “Secure” units that you cant get out of
- ▶ Requirement that money applied first to care services and not to rent

# Other CHIP problems

- Alternative packages of care services are not explained – so what do you get for “basic” services included in all rents and what do you get for the “levels” of services available – measured by time? Type of service? Etc ?
- Minimum staffing levels and qualifications of staff – what does this mean? Must they list # of each type of staff on duty at any one time OR can landlord just state that at any time the place may be staffed by a nurse, a PSW, a janitor, etc ... Latter doesn't make sense if provisions are to reflect consumer disclosure in order to facilitate choice – same issue under RHA

# Obligations of Landlords – same as for other tenancies

- ▶ Keep place in good repair and comply with health, safety, health and maintenance standards s. 20
- ▶ Cannot withhold reasonable supply of vital services , care service, or food if Landlord obligation to supply and cannot interfere with reasonable supply of same . S. 21
  - Deemed to have interfered if fails to pay third party for these and that party withholds

# Obligations of Landlords – same as for other tenancies

- ▶ S.22 – cannot interfere with reasonable enjoyment of premises by tenant
- ▶ S 23 – Landlord not to harass, obstruct, coerce, threaten or interfere with a tenant
- ▶ S. 25 can enter unit only as permitted by act
  - To clean if tenancy agreement so provides
  - To show unit to prospective tenants if LLd and T agreed to termination of tenancy or one has given notice to the other
  - Can enter with notice – for repairs etc, to let potential mortgagee / insurer to view
  - Etc – see s. 27

# Entry to check condition of tenant

142. (1) Despite section 25, a landlord may enter a rental unit in a care home at regular intervals to check the condition of a tenant in accordance with the tenancy agreement if the agreement requires the landlord to do so. 2006, c. 17, s. 142 (1).

## **Right to revoke provision**


(2) A tenant whose tenancy agreement contains a provision requiring the landlord to regularly check the condition of the tenant may unilaterally revoke that provision by written notice to the landlord. 2006, c. 17, s. 142 (2).

# External care providers

147. A landlord shall not,

- (a) do anything to prevent a tenant of a care home from obtaining care services from a person of the tenant's choice that are in addition to care services provided under the tenancy agreement; or
- (b) interfere with the provision of care services to a tenant of a care home, by a person of the tenant's choice, that are in addition to care services provided under the tenancy agreement. 2006, c. 17, s. 147.

# External Care Providers – Problems

- ▶ Efforts by landlords to block external providers not associated with landlord
  - ▶ Clauses in tenancy agreement to not get external provider unless landlord's services used first
- 

# CCAC services

- ▶ Tenants in care homes are still eligible for CCAC services but have heard of landlords not delivering the package services when CCAC is in



# Tenant applications for LLd breach of duties

29. (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:

1. An order determining that the landlord has breached an obligation under subsection 20 (1) or section 161.
2. An order determining that the landlord, superintendent or agent of the landlord has withheld the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfered with the reasonable supply of any vital service, care service or food.
3. An order determining that the landlord, superintendent or agent of the landlord has substantially interfered with the reasonable enjoyment of the rental unit or residential complex for all usual purposes by the tenant or a member of his or her household.
4. An order determining that the landlord, superintendent or agent of the landlord has harassed, obstructed, coerced, threatened or interfered with the tenant during the tenant's occupancy of the rental unit.
5. An order determining that the landlord, superintendent or agent of the landlord has altered the locking system on a door giving entry to the rental unit or the residential complex or caused the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.
6. An order determining that the landlord, superintendent or agent of the landlord has illegally entered the rental unit. 2006, c. 17, s. 29 (1).

# Tenant Responsibilities

**s.33 – Ordinary Cleanliness** – The tenant is responsible for ordinary cleanliness of the rental unit

**s.34– Tenant’s responsibility for repair of damage** The tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the wilful or negligent conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant.

## Changing locks

**35. (1)** A tenant shall not alter the locking system on a door giving entry to a rental unit or residential complex or cause the locking system to be altered during the tenant’s occupancy of the rental unit without the consent of the landlord.

## Tenant not to harass, etc.

**36.** A tenant shall not harass, obstruct, coerce, threaten or interfere with a landlord.

# Security of tenure and Eviction

- ▶ Tenant has security of tenure and tenancy can be terminated only in accordance with act
- ▶ Usual grounds
  - By agreement
  - Termination for Cause
    - illegal act by tenant
    - Wilful or negligent damage to unit
    - Behaviours that interfere with reasonable enjoyment of premises by landlord or other tenants
    - Action of omission that impairs safety of others
    - Non payment of rent

# Termination by tenant

145. (1) Despite section 44, a tenant of a care home may terminate a tenancy at any time by giving at least 30 days notice of termination to the landlord. 2006, c. 17, s. 145 (1).

## Care services and meals

(2) A tenant who terminates a tenancy under subsection (1) may require the landlord to stop the provision of care services and meals before the date the tenancy terminates by giving at least 10 days notice to the landlord. 2006, c. 17, s. 145 (2).


## Same

(3) The tenant has no obligation to pay for care services and meals that would otherwise have been provided under the tenancy agreement after the date the landlord is required to stop the provision of care services and meals under subsection (2). 2006, c. 17, s. 145 (3).

## Same

(4) The estate of a tenant has no obligation to pay for care services and meals that would otherwise have been provided under the tenancy agreement more than 10 days after the death of the tenant. 2006, c. 17, s. 145 (4).

# Why shorter period

- ▶ To facilitate transfers to LTC
  - ▶ To be fairer to tenants leaving because of health
  - ▶ Be warned – many operators ignore this and don't understand or ignore duty to mitigate
  - ▶ Also landlords may try to claim costs for services for full notice period when can claim only for 10 days if Tenant gives proper notice
- 

# Special ground of eviction

148. (1) A landlord may apply to the Board for an order transferring a tenant out of a care home and evicting the tenant if

- (a) the tenant no longer requires the level of care provided by the landlord; or
  - (b) the tenant requires a level of care that the landlord is not able to provide.
- 2006, c. 17, s. 148 (1).

## Order

- (2) The Board may issue an order under clause (1) (b) only if it is satisfied that,
- (a) **appropriate alternate accommodation is available for the tenant**; and
  - (b) the level of care that the landlord is able to provide when combined with the community based services provided to the tenant in the care home cannot meet the tenant's care needs. 2006, c. 17, s. 148 (2).

## Mandatory mediation

- (3) If a dispute arises, the dispute shall be sent to mediation before the Board makes an order. 2006, c. 17, s. 148 (3).

## Same

- (4) If the landlord fails to participate in the mediation, the Board may dismiss the landlord's application. 2006, c. 17, s. 148 (4).

# Notice of termination if rehab, therapeutic services

144. (1) A landlord may, by notice, terminate the tenancy of a tenant in a care home if,

- (a) the rental unit was occupied solely for the purpose of receiving rehabilitative or therapeutic services agreed upon by the tenant and the landlord;
- (b) no other tenant of the care home occupying a rental unit solely for the purpose of receiving rehabilitative or therapeutic services is permitted to live there for longer than the prescribed period; and
- (c) the period of tenancy agreed to has expired. 2006, c. 17, s. 144 (1).

## **Period of notice**

(2) The date for termination specified in the notice shall be at least the number of days after the date the notice is given that is set out in section 44 and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term. 2006, c. 17, s. 144 (2).

# Notice of termination

- ▶ **Notice of termination, demolition, conversion or repairs**

146. (1) A landlord who gives a tenant of a care home a notice of termination under section 50 shall make reasonable efforts to find appropriate alternate accommodation for the tenant.  
2006, c. 17, s. 146 (1).

## Same

(2) Sections 52 and 64 do not apply with respect to a tenant of a care home who receives a notice of termination under section 50 and chooses to take alternate accommodation found by the landlord for the tenant under subsection (1).  
2006, c. 17, s. 146 (2).



# Rent in care home more than one tenancy agreement in same unit

149. If there is more than one tenancy agreement for a rental unit in a care home, the provisions of Part VII apply, subject to subsection 6 (2), with respect to each tenancy agreement as if it were an agreement for a separate rental unit. 2006, c. 17, s. 149

# Assignment, subletting in care homes

143. A landlord may withhold consent to an assignment or subletting of a rental unit in a care home if the effect of the assignment or subletting would be to admit a person to the care home contrary to the admission requirements or guidelines set by the landlord. 2006, c. 17, s. 143.

# Notice of rent increase

## Landlord's duty, rent increases

110. No landlord shall increase the rent charged to a tenant for a rental unit, except in accordance with this Part. 2006, c. 17, s. 110.

## Lawful rent for new tenant

113. Subject to section 111, the lawful rent for the first rental period for a new tenant under a new tenancy agreement is the rent first charged to the tenant. 2006, c. 17, s. 113.

# Notice of rent increase

## Notice of rent increase required

116. (1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so. 2006, c. 17, s. 116 (1).

## Same

(2) Subsection (1) applies even if the rent charged is increased in accordance with an order under section 126. 2006, c. 17, s. 116 (2).

## Contents of notice

(3) The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent. 2006, c. 17, s. 116 (3).

## Increase void without notice


(4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase. 2006, c. 17, s. 116 (4).

# 12-month rule

119. (1) A landlord who is lawfully entitled to increase the rent charged to a tenant for a rental unit may do so only if at least 12 months have elapsed,

- (a) since the day of the last rent increase for that tenant in that rental unit, if there has been a previous increase; or
- (b) since the day the rental unit was first rented to that tenant, if clause (a) does not apply. 2006, c. 17, s. 119 (1).

# Quantum of increase

- ▶ Rent can be increased in accordance with the guideline (3.1% in 2012)
  - ▶ Landlord can apply to Landlord and Tenant Board to ask for increase in rent above guideline
- 

# Notice of increase for care services

## Notice of increased charges

150. (1) A landlord shall not increase a charge for providing a care service or meals to a tenant of a rental unit in a care home without first giving the tenant at least 90 days notice of the landlord's intention to do so. 2006, c. 17, s. 150 (1).

## Contents of notice

(2) The notice shall be in writing in the form approved by the Board and shall set out the landlord's intention to increase the charge and the new charges for care services and meals. 2006, c. 17, s. 150 (2).

## Effect of non-compliance

(3) An increase in a charge for a care service or meals is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase. 2006, c. 17, s. 150 (3).

## Certain charges permitted

151. (1) Nothing in subsection 134 (1) limits the right of a landlord to charge a tenant of a rental unit in a care home for providing care services or meals to the tenant so long as the landlord has complied with the requirements of sections 140 and 150. 2006, c. 17, s. 151 (1).

## Same

(2) Nothing in subsection 134 (3) limits the right of a tenant or a person acting on behalf of a tenant to charge a subtenant of a rental unit in a care home for providing care services or meals to the subtenant. 2006, c. 17, s. 151 (2).

# Restraint and Detention under RTA

- ▶ No authority under RTA to detain or restrain a tenant
- ▶ NO authority for locked units in retirement homes unless and until sections about secure units are proclaimed in effect \*\*\*\*\*



- ▶ Info under RHA that must be given to tenants

# Under RHA

- ▶ Written agreement in respect to residency
- ▶ Package of Information
- ▶ Public Information in an accessible place
- ▶ Posted Information

# Written agreement

## Agreement required

53. (1) The licensee of a retirement home shall enter into a written agreement with every resident of the home before the resident commences residency in the home.

## Contents of agreement

(2) The agreement shall contain the prescribed requirements.

## Plain language

(3) The agreement must be expressed in plain language that is clear and concise.

# Agreement before resident commences residency O. Reg

9. The agreement that subsection 53 (1) of the Act requires the licensee of a retirement home to enter into with a resident of the home shall contain,
- (a) the heading “*Retirement Homes Act, 2010 Provisions*” or the equivalent of that heading in the language of the agreement if the agreement is not in English;
  - (b) under the heading mentioned in clause (a), a notice to the resident that sections 77 and 80 of the Act authorize an inspector or an investigator respectively to inspect, copy and remove records containing a resident’s personal information, including personal health information, from the home for the purpose of determining whether the licensee is in compliance with the requirements of the Act;
  - (c) under the heading mentioned in clause (a), a statement as to whether or not the licensee will indemnify the resident against loss of the resident’s possessions and if so, the details of the indemnification, including the extent to which the resident’s possessions are insured by the licensee; and
  - (d) under the heading mentioned in clause (a), a statement from the licensee that,
    - (i) the licensee has given to the resident the package of information required by clause 54 (1) (a) of the Act,
    - (ii) the package includes all of the information required under subsection 54 (2) of the Act, and
    - (iii) the licensee warrants that all of the information that the licensee provided in the package was accurate and complete on the date of the agreement.

# Info to Residents RHA s.54

## Information for residents

54. (1) Every licensee of a retirement home shall ensure that,
- (a) a package of information that complies with this section is given to every resident of the home and to the substitute decision-maker of the resident, if any, before the resident commences his or her residency;
  - (b) the package of information is made available to family members of a resident of the home and persons of importance to the resident if the resident or the resident's substitute decision-maker so consents;
  - (c) the package of information is accurate and revised as necessary; and
  - (d) any material revisions to the package of information are provided to any person who has received the original package and who is still a resident of the home or substitute decision-maker of a resident of the home.

# Contents of Required Info Package RHA s 54

- (2) The package of information shall include, at a minimum,
- (a) the Residents' Bill of Rights;
  - (b) **a statement that, if the retirement home also falls within the meaning of a care home as defined in the *Residential Tenancies Act, 2006*, nothing in this Act overrides or affects the provisions of the *Residential Tenancies Act, 2006* that would otherwise apply with respect to the home as a care home;**
  - (c) the licensee's policy mentioned in subsection 67 (4) to promote zero tolerance of abuse and neglect of residents;
  - (d) the licensee's procedure for complaints mentioned in subsection 73 (1);
  - (e) the licensee's policy mentioned in subsection 68 (3) regarding the use of personal assistance services devices for residents;
  - (e.1) the licensee's policy mentioned in subsection 68 (4) regarding the confinement of residents to a secure unit of their retirement home and a description of the rights of residents in relation to the confinement, including the right to consult a rights adviser as described in section 70;
  - (f) the name, telephone number and e-mail address of the licensee;
  - (g) information about the role of the Authority and its contact information;
  - (h) information about the Residents' Council, including any information that the Residents' Council provides for inclusion in the package;
  - (i) an explanation of the protection afforded for whistle-blowing described in section 115;
  - (j) information relating to the contents of the written agreement that section 53 requires each of the residents and the licensee to make;
  - (k) **an itemized list of the different types of accommodation and care services provided in the retirement home and their prices;**
  - (l) **a statement that a resident may purchase or apply for care services, other services, programs or goods from external care providers;**
  - (m) information about the licensee's process for assisting residents to purchase or apply for care services and other services, programs or goods from external providers;

# Contents

## of Required Info Package RHA s 54

- (n) information regarding the rights of residents if the licensee chooses to reduce or discontinue the care services that the licensee provides to residents;
- (o) disclosure of any non-arm's length relationships that exist between the licensee and external care providers;
- (p) contact information for the community care access corporation approved as an agency under subsection 5 (1) of the *Home Care and Community Services Act, 1994* for the area in which the retirement home is located;
- (q) information relating to the assessments required to prepare a plan of care, including a resident's right to apply for publicly funded assessments;
- (r) information about the licensee's process for assisting a resident in his or her transition to a long-term care home or other place of residence;
- (s) information as to whether the retirement home has automatic sprinklers in each resident's room;
- (t) information relating to staffing, including night time staffing levels and qualifications of staff of the retirement home;**
- (u) a statement as to whether the retirement home is required under subsection 60 (2) to have a resident-staff communication and response system and whether the home has such a system and, if so, details of the system; and
- (v) all other information that is prescribed.

# Package of information for Residents O. Reg s.10

## Package of information for residents

- 10.** For the purposes of clause 54 (2) (v) of the Act, the package of information mentioned in clause 54 (1) (a) of the Act that a licensee of a retirement home is required to give to every resident of the home shall include,
- (a) **a statement that section 62 of the Act requires the licensee to assess a resident when the resident commences residency in the home and to reassess the resident every six months but that the licensee is not authorized to assess or reassess a resident without the resident's consent;**
  - (b) a statement that the residents have the right to form a Residents' Council if one does not yet exist;
  - (c) a statement whether the licensee offers programs, activities or services to encourage the mental stimulation of residents and, if so, information about them;
  - (d) a statement whether the licensee offers programs, activities or services to address the social, recreational and spiritual needs of residents and, if so, information about them;
  - (e) information about how to reduce the incidence of infectious disease outbreaks, including the need for and method of maintaining proper hand hygiene and the need for and process of reporting infectious illness;
  - (f) information about the strategies the licensee has implemented to reduce or mitigate the risk of falls in common areas of the home;



# Package of information for Residents

## O. Reg s.10

- (g) a statement as to whether or not services in the home are provided in French or in any other languages in addition to English and, if so, a list of those languages;
- (h) a statement that section 68 of the Act prohibits the licensee and external care providers who provide care services in the home from restraining a resident of the home in any way including by the use of a physical device or by the administration of a drug except as permitted by section 71 of the Act when immediate action is necessary to prevent serious bodily harm to a resident or to others;
- (i) a statement whether the licensee allows a resident of the home to entrust money to the care of the licensee on behalf of the resident and if so, a copy of the written trust account policy and procedures described in subsection 57 (7);
- (j) a statement that the Act does not require the licensee to audit trust accounts into which the licensee is required to deposit money entrusted into the licensee's care on behalf of a resident but that the Registrar may order the licensee to audit any such trust account; and
- (k) a statement that sections 77 and 80 of the Act authorize an inspector or an investigator respectively to inspect, copy and remove records containing a resident's personal information, including personal health information, from the home for the purpose of determining whether the licensee is in compliance with the requirements of the Act. O. Reg. 166/11, s.

# Public Information RHA s.55

**55. (1)** Every licensee of a retirement home shall ensure that the following information is made available in the home, in an easily accessible location and in a manner that complies with the prescribed requirements, if any:

1. The package of information described in subsection 54 (2).
2. **Copies of the final reports done by inspectors under section 77 in the previous two years for the retirement home, subject to section 114.**
3. Orders made by the Registrar with respect to the retirement home that are in effect or that have been made in the previous two years, subject to section 114.
4. Decisions of the Tribunal or the Divisional Court that were made under this Act with respect to the retirement home within the previous two years.
5. The minutes of the most recent Residents' Council meeting, if the Council consents to their disclosure.
6. All other information that is prescribed.

# Posting information RHA S.55

(2) Every licensee of a retirement home shall ensure that the following information is posted in the home in a conspicuous and easily accessible location and in a manner that complies with the prescribed requirements, if any:

1. The Residents' Bill of Rights.
2. The licensee's licence for the home.
3. An explanation of the measures to be taken in case of fire.
4. All other information that is prescribed.

# Posted information

## O.Reg s.11

### Posted information

11. For the purposes of paragraph 4 of subsection 55 (2) of the Act, the following information is prescribed as information that must be posted in a retirement home under that subsection:
1. Contact information for the Authority.
  2. A statement as to whether or not services in the home are provided in French or in any other languages in addition to English and, if so, a list of those languages.
  3. An explanation of the procedures to be followed in the case of an evacuation.
  4. Information about reporting to the Registrar matters relating to the care and safety of the residents of the home that is on a sign that the Registrar provides or that is in a form that the Registrar approves.
  5. A statement that sections 77 and 80 of the Act authorize an inspector or an investigator respectively to inspect, copy and remove records containing a resident's personal information, including personal health information, from the home for the purpose of determining whether the licensee is in compliance with the requirements of the Act.
  6. A copy of the most recent final inspection report prepared by an inspector under section 77 of the Act, subject to section 114 of the Act.
- O. Reg. 166/11, s. 11.

# Public information

## O.Reg s3

3. (1) For the purposes of paragraph 4 of subsection 55 (2) of the Act, the following information is prescribed as information that must be posted in a retirement home under that subsection: information about reporting to the Registrar matters relating to the care and safety of the residents of the home that is on a sign that the Registrar provides or that is in a form that the Registrar approves.
- (2) Paragraph 4 of subsection 55 (2) of the Act applies to an operator of a retirement home who is not licensed under the Act as if the operator were a licensee.

# ACE materials on RTA and RHA

- ▶ ACE and CLEO are working on the production of plain language materials for the public on the RTA as it applies to retirement homes and on the RHA
- ▶ ACE also writing more material with legal references about rights of tenants in retirement homes and remedies to be available for lawyers and advocates as well as tenants to help self advocate and to assist in representation
- ▶ All materials will be available in due course on [www.ancelaw.ca](http://www.ancelaw.ca)