I. George Lysyk **January 23rd, 2025**
<M.F.I.P.P.A 14(1)>

RE: January 27, 2025 City Council Meeting – Item SF-25-02

Renovictions in Rental Units in the City of Oshawa (All Wards)

City of Oshawa Council Members,

I am writing you this letter as I am very intrigued with the proposed "Renovictions in Rental Units in the City of Oshawa (All Wards)" motion (Item SF-25-02) as I am opposed with the motion in its entirety. If approved, this licensing program or by-law would result in a redundant, extra layer of governmental "red tape".

"Renovictions" have been a hot topic at the Landlord and Tenant Board (LTB) over the past few years. As a result, new rules have been brought into effect under the Residential Tenancy Act (RTA) such that tenant's rights are protected to avoid so called "renovictions". Section 50(1) of the RTA requires that the termination date in the landlord's notice of termination must be at least 120 days after the notice is given and must be the last day of a fixed term tenancy or of a rental period. This notice is often referred to as a "N13 notice".

Section 50(1) of the RTA states that if a tenant is given a notice because of extensive repairs or renovations, the tenant **can choose to move back** into the rental unit after the repairs or renovations are complete. The rent must be the same as the rent before the tenancy was terminated. However, before the tenant moves out, the tenant must inform the landlord in writing of their intent to re-occupy the rental unit. Additionally, during the renovation/repair period the tenant must also keep the landlord informed in writing of any change in their address. Under the RTA, the landlord **cannot refuse to allow** the tenant to move back into the rental unit if the tenant has provided written notice.

All other possible situations are already cover under Section 50(1) of the RTA:

- If the rental unit is located in a residential complex that contains five residential units or more and the tenant does not give the landlord a written notice stating that they want to move back after the repairs are completed, the landlord must give the tenant an amount equal to three months' rent or offer another rental unit that is acceptable to the tenant.

- If a tenant is given a notice because the rental unit is being repaired or renovated and is located in a residential complex that contains fewer than five residential units and the tenant does not give the landlord a written notice stating that they want to move back after the repairs are completed, the landlord must give the tenant an amount equal to one month's rent or offer another rental unit that is acceptable to the tenant.

- If the tenant lives in a residential complex that contains five or more residential units and gives written notice that they will be moving back into the rental unit once the repairs are complete, the landlord must give the tenant an amount equal to the rent for the lesser of three months and the period of time that the unit is undergoing repairs or renovations.

- If a tenant is given a notice because the rental unit is being repaired or renovated and is located in a residential complex that contains fewer than five residential units and the tenant gives written notice that they will be moving back into the rental unit once the repairs are complete, the landlord must give the tenant an amount equal to the rent for the lesser of one months' and the period of time that the unit is undergoing repairs or renovations.

- Compensation is not required if the landlord has been ordered to do the repair or renovation or if the tenant resides in a social housing rental unit.

In conclusion, last year, this same Council contemplated a Residential Rental Housing Licensing Program. It was not passed once Council understood that multiple systems have always existed to protect tenant's rights be it through the Province of Ontario (LTB), Municipal By-law Enforcement, Fire Prevention Department and the municipal Building Department. Systems already exist to protect tenants from "renovictions" that have been put in place by the Province of Ontario. By proposing a "Rental Unit Renovation By-law" or a "Renovation Licence Program" you will be adding an extra level of bureaucracy that is not needed therefore, creating an extra level of governmental "red tape".

I caution every member of Oshawa Council to not make the same mistakes in wasting taxpayers' money and Municipal Staff's time by passing item SF-25-02 to fabricate a report that will list everything I have outlined above. Additionally, a citywide "Rental Unit Renovation By-law" and "Renovation Licence Program" will not deter those individuals who are planning "renovictions" to unlawfully increase rents.

Should item SF-25-02 be approved at the January 27th, 2025 Council Meeting, I ask to be added to the "Interested Party List" to be kept informed of all Staff Reports, Public Meetings/Input Requests, Safety and Facilities Services Committee Meetings and City of Oshawa Council Meeting pertaining to this matter.

Sincerely,

<M.F.I.P.P.A 14(1)>

I. George Lysyk

Tribunals Ontario

Landlord and Tenant Board

Ontario

Eviction for Personal Use, Demolition, Repairs and Conversion

Interpretation Guideline 12

(Disponible en français)

Interpretation Guidelines are intended to assist the parties in understanding the LTB's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.

Introduction

A landlord may apply to terminate a tenancy on the basis the rental unit is needed for use by the landlord, the landlord's spouse, a child or parent of the landlord or the landlord's spouse or a person who provides or will provide care services to the landlord or landlord's family.

A landlord may also apply to terminate a tenancy on the basis the landlord has entered into an agreement of purchase and sale for the rental unit and the unit is needed by the purchaser, the purchaser's spouse, a child or parent of the purchaser or the purchaser's spouse or a person who provides or will provide care services to the purchaser or purchaser 's family

A landlord may also apply to terminate a tenancy on the basis that the landlord: (1) will demolish the rental unit; (2) needs vacant possession to do extensive repairs or renovations; or (3) intends to convert the rental unit to non-residential use.

This Guideline discusses how the Landlord and Tenant Board (LTB) deals with these applications made under the *Residential Tenancies Act, 2006* ("RTA"). Amendments to some of the RTA provisions effecting these applications took effect on September 1, 2021. Special transitional rules may apply to some notices and applications served before these amendments were proclaimed.

For general information about eviction applications, see Guideline 10: Procedural Issues Regarding Eviction Applications.

Personal Use by the Landlord or Landlord's Family

Section 48(1) of the RTA permits the landlord to give notice of termination to a tenant if the landlord, in good faith, requires the unit for residential occupation for a period of at least one year by the landlord, a specified family member or a caregiver. This notice is often referred to as a "N12 notice".

Section 191 of the RTA and LTB Rule of Procedure 3 set out the rules about how to serve notices and other documents.

Who can occupy the rental unit?

The N12 notice can indicate that any one of the following persons intends to occupy the rental unit: the landlord; the landlord's spouse; a child or a parent of either the landlord or the landlord's spouse; or a person who

provides or will provide care services to the landlord or a family member of the landlord where the person receiving the care services resides or will reside in the building.

The N12 notice cannot include other family members who are not specified in section 48(1), such as a landlord's siblings. See for example: TSL-70431-16 (Re), 2016 CanLII 52813 (ON LTB); NOL-03484-10 (Re), 2011 CanLII 5985 (ON LTB).

Termination date

The termination date in the landlord's notice of termination must be at least 60 days after the N12 notice is given and must be the last day of a fixed term tenancy, or if there is no fixed term, on the last day of a rental period. For example, if the current month is January and the lease expires on June 30 of the same year, the termination date should be June 30. If there is a month-to-month tenancy agreement with the rent due on the 1st day of each month and notice is provided to the tenant on January 20, the earliest the termination date on the notice can be is March 31 which is 60 days after the notice is given and on the last day of the monthly rental period.

A N12 notice with an incorrect termination date is defective. A defective notice cannot be amended after it has been given to the tenant. The LTB cannot issue an order terminating a tenancy on the basis of a defective notice of termination. See for example: CEL-02248 (Re), 2007 CanLII 75937 (ON LTB); TSL-72954-16 (Re), 2016 CanLII 44293 (ON LTB).

After being given the notice, the tenant is allowed to terminate the tenancy at an earlier date by giving give the landlord ten days written notice using a *Tenant's Notice to End the Tenancy* (N9 notice)

The landlord may apply to the LTB for an eviction order as soon as the notice has been given to the tenant, but section 69(2) of the RTA states that it may not be filed later than 30 days after the termination date in the notice. If the application is filed late, it will be dismissed. The LTB schedules a hearing to consider the landlord's application and all parties have a right to attend the hearing and provide relevant evidence and submissions.

Affidavit or Declaration

Subsection 72(1) of the RTA requires the landlord to file an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for at least one year.

Effective September 1, 2021 the affidavit must be filed with the LTB at the same time as the application is filed. The LTB will not accept the application without the affidavit.

In accordance with s.192.1 of the RTA and LTB Rule of Procedure 1.5, instead of an affidavit, the LTB will also accept a signed and dated declaration containing the same information. The person who makes the declaration must confirm the truth of the information or statement and acknowledge that making a false declaration is an offense. Declaration forms are available on the LTB's website.

The person who provided the affidavit is not required to testify at the LTB hearing, unless they have been summoned by one of the parties. However, as a general principle of law, oral testimony at an LTB hearing is given greater weight than testimony provided in written form.

Examples of LTB orders addressing the affidavit requirement include: TNL-86355-16 (Re), 2017 CanLII 51474; SWL-85060-16 (Re), 2016 CanLII 44343 (ON LTB); TSL-70431-16 (Re), 2016 CanLII 52813 (ON LTB).

If there is a conflict between the oral testimony and the affidavit it is up to the Member to decide what evidence is most persuasive: *Sertic v. Mergarten* , 2017 ONSC 263.

Requirement of good faith

At the LTB hearing the landlord must prove, on a balance of probabilities, that he or she in good faith requires the rental unit for the purpose of residential occupation by the person specified in the notice of termination. That

means that the Member must decide whether it is more likely than not the landlord or family member will move into the unit within a reasonable time after the unit becomes vacant.

When deciding "good faith" the LTB must consider whether the landlord has a genuine intention to occupy the premises. Whether the landlord's plan is reasonable is not the test: *Feeney v. Noble*, 1994 CanLII 10538 (ON SC).

In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

> In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.
>
> While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.
>
> Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord *requires* the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the rental unit are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. The Court also stated the LTB can consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.

For example, a tenant may wish to prove that the same landlord gave a notice of termination for personal use of another unit earlier, obtained possession and then rented it to another tenant. This is not determinative evidence that the landlord lacks good faith, but it may be considered by the Member in weighing the landlord's evidence. Evidence of previous problems between the current tenant and the landlord may also be relevant to the genuineness of the landlord's intention to use the unit as stated in the notice.

When determining whether the landlord has satisfied the good faith requirement, the LTB may also consider whether the landlord has served previous N12 notices or N13 notices for any rental unit, and whether the intended occupant lived in the rental unit for at least one year or whether the landlord carried out the intended activity at the rental unit. As discussed below, effective September 1, 2021 an application for termination of the tenancy based on a N12 or N13 notice must include specified information about every N12 or N13 notice the landlord gave to other tenants in the previous two years.

Examples of LTB orders finding that the landlord has satisfied the good faith requirement: TEL-69842-16 (Re), 2016 CanLII 38802 (ON LTB); TSL-60770-15 (Re), 2015 CanLII 69062 (ON LTB); TSL-56775-14 (Re), 2014 CanLII 71671 (ON LTB); TSL-75867-16 (Re), 2016 CanLII 71599 (ON LTB).

Examples of LTB orders finding that the landlord has not satisfied the good faith requirement: TSL-76001-16 (Re), 2017 CanLII 28525 (ON LTB), EAL-59819-16 (Re), 2016 CanLII 88067 (ON LTB); TSL-55743-14 (Re), 2015 CanLII 9141 (ON LTB); TSL-09908-10 (Re), 2011 CanLII 13483 (ON LTB).

Allowable uses of the rental unit

The landlord must establish that the unit will be used for "residential occupation" as required by section 48 of the RTA. That term is not defined in the RTA but it has been considered in a number of LTB and court decisions.

- Occasional or infrequent use of the rental unit does not constitute residential occupation: TSL-80318-16 (Re), 2017 CanLII 14304 (ON LTB), upheld by the Divisional Court; *Kohen v. Warner*, 2018 ONSC

3865; TSL-65943-15 (Re), 2015 CanLII 94908 (ON LTB); CET-33575-13 (Re), 2014 CanLII 71654 (ON LTB); NOL-09721-12 (Re), 2012 CanLII 74622 (ON LTB); TSL-08570-10 (Re), 2010 CanLII 76079 (ON LTB).

- Using the rental unit as a business office so that the landlord can meet with tenants of the building and have access to a bathroom was found to be inconsistent with the purpose of subsection 48(1): TSL-24120-12 (Re), 2012 CanLII 21575 (ON LTB).
- Leaving the rental unit empty after the tenant vacates was found not to be residential occupation: TEL-01943 (Re), 2007 CanLII 75965 (ON LTB).
- Using the basement rental unit for storage of items the landlord uses for her profession and to construct a recreation room was found to be residential occupation: TSL-62768-15-RV2 (Re), 2015 CanLII 100191 (ON LTB), upheld by the Divisional Court, *Sertic v. Mergarten*, 2017 ONSC 263.
- Using a basement rental unit as home office/study where the landlord lives on the upper floors was found to be "residential occupation" so long as the scholarly, professional, business or other such activity does not constitute the predominant use: TSL-72600 (Re), 2005 CanLII 91265 (ON LTB).

Corporate landlords and shareholders of a corporation

On September 1, 2017 the RTA was amended to provide that section 48 only applies to rental units that are owned in whole or in part by landlords who are individuals. A corporate landlord cannot serve a notice under section 48 or obtain an eviction order under this section. Earlier decisions permitting some corporations to serve this type of notice are no longer valid.

Compensation

For notices given to a tenant under section 48 of the RTA, the landlord must compensate the tenant in an amount equal to one month's rent or offer another rental unit acceptable to the tenant. This requirement must be met by the termination date on the notice of termination. The LTB will not issue an order ending the tenancy and evicting the tenant unless the landlord has satisfied this obligation. Under subsection 135(1.1) of the RTA, a landlord is deemed to have retained money in contravention of the RTA, if the landlord fails to pay the tenant the required compensation.

Personal Use by a Purchaser or Their Family

Section 49 of the RTA permits the landlord to give notice of termination to a tenant on behalf of a purchaser of the rental unit if:

a. the landlord has entered into an agreement of purchase and sale to sell a residential complex containing no more than 3 units, or a condominium unit; and
b. the purchaser, in good faith, requires possession of the complex or the unit for residential occupation by the purchaser, his or her spouse, or a child or parent of one of them.

Agreement of purchase and sale

Before a landlord may give a notice under section 49, there must be an agreement of purchase and sale for the residential complex or condominium unit. The LTB may refuse an application if it is not reasonably certain that a completed sale will result from the agreement. If a term or condition of the agreement makes it uncertain that the deal will be completed, it may be appropriate to delay the application until the sale becomes more certain.

The LTB may also dismiss the application if satisfied the purchase is a pretence created for the purpose of evicting the tenant. For example, a transfer to a family member or a sale for much less than market value may raise questions. Section 202 of the RTA directs the LTB to look at the real nature of any transactions. See for example: SOL-01897 (Re), 2007 CanLII 75946 (ON LTB); CEL-61051-16 (Re), 2016 CanLII 88110 (ON LTB).

A landlord applying based on a N12 notice served under section 49 should provide a copy of the agreement of purchase and sale to the tenant and the LTB at least 7 days before the hearing, unless the LTB orders otherwise.

There is also a good faith requirement similar to that related to section 48 (see above). The requirement relates to the genuine intention of the purchaser and the person who declares they intend to occupy the unit (see subsections 49(1) and 72(1) of the RTA). See for example: TSL-76546-16 (Re), 2016 CanLII 71338 (ON LTB); TNL-27406-12 (Re), 2012 CanLII 27936 (ON LTB).

As section 49(1) states that a notice to terminate a tenancy for use by a purchaser or family member can only be served if the residential complex has no more than three residential units, an application concerning a residential complex with more than three units will be dismissed: TSL-80642-16 (Re), 2017 CanLII 28814 (ON LTB).

Compensation

For N12 notices given to a tenant under section 49 the landlord must compensate the tenant in an amount equal to one month's rent or offer another rental unit acceptable to the tenant. The obligation to pay the compensation belongs to the landlord who served the notice on the tenant, not the purchaser of the rental unit. The compensation must be paid by the termination date on the N12 notice. The LTB will not issue an order ending the tenancy and evicting the tenant unless the landlord has satisfied this obligation. Under subsection 135(1.1) of the RTA, a landlord is deemed to have retained money in contravention of the RTA, if the landlord fails to pay the tenant the required compensation.

Personal Use by a Person Who Provides or Will Provide Care Services

Subsection 48(1)(d) and 49(1)(d) of the RTA permit a landlord to give notice of termination to a tenant if the landlord or purchaser, in good faith, requires the unit for residential occupation by a person who provides or will provide care services to the landlord or purchaser, or the landlord's or purchaser's spouse, parent, child, or spouse's parent or child. In the case of care services being provided to the landlord or the landlord's family, the caregiver must live in the rental unit for at least one year.

The person receiving the care must reside or intend to reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

"Care services" are defined in s. 2 as "health care services, rehabilitative or therapeutic services or services that provide assistance with the activities of daily living". Care services are further defined in section 2 of Ontario Regulation 516/06.

Restriction on "co-ownerships"

Subsection 72(2) of the RTA contains special provisions that apply only to an unusual type of housing arrangement known as "co-ownership". This involves a number of individuals owning a building through a corporation or as tenants-in-common. Subsection 72(2) applies when such a building has been marketed as single units. This method of offering a building for sale on a unit basis avoids the rules of the *Condominium Act*. The co-owner has no rights to the unit they are apparently buying, except by agreement with the other co-owners. Their rights respecting the unit may include both the rent revenue from that unit and the right to occupy the unit.

Subsection 72(2) provides protection for tenants of units that have been sold in this way to co-owners. Even if the co-ownership agreement purports to give the "unit owner" the right to occupy the unit, they cannot do so unless: the building does not have more than four units, or; the landlord, the landlord's spouse, a child or a parent of either the landlord or the landlord's spouse, or a person who provided care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse previously lived in the unit.

This section of the RTA does not apply to other types of rental units and is not a general prohibition on landlords of complexes with more than four rental units relying upon sections 48 or 49 of the RTA. See *Seibert v. Juhasz*, 2012 ONSC 5447.

Termination for Demolition/Renovation/Conversion

Section 50(1) of the RTA allows a landlord to serve a notice of termination if the landlord intends to:

1. demolish the rental unit;
2. convert it to a purpose other than residential premises; or
3. do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.

The termination date in the landlord's notice of termination must be at least 120 days after the notice is given and must be the last day of a fixed term tenancy, or if there is no fixed term, the last day of a rental period. This notice is often referred to as a "N13 notice". Also see the above discussion about the consequence of an incorrect termination date on a notice of termination.

After being given a N13 notice, the tenant is allowed to terminate the tenancy at an earlier date by giving the landlord ten days written notice using a Tenant's *Notice to End the Tenancy*(N9 notice).

Demolition

If a tenant is given a notice because the rental unit is being demolished and is located in a residential complex that contains five or more residential units, the landlord must give the tenant an amount equal to three months' rent or offer the tenant another rental unit that is acceptable to the tenant.

If a tenant is given a notice because the rental unit is being demolished and is located in a residential complex that contains fewer than five residential units, the landlord must give the tenant an amount equal to one months' rent or offer the tenant another rental unit that is acceptable to the tenant.

No compensation is required if the landlord has been ordered to demolish the residential complex.

Whether or not the intended activity constitutes "demolition" is discussed in these LTB orders: TSL-51257-14-RV (Re), 2015 CanLII 22344 (ON LTB); TSL-05299-10 (Re), 2010 CanLII 76078 (ON LTB).

The requirement to pay compensation does not apply to most social housing rental units. See section 7 of the RTA.

Conversion

If a tenant is given a notice because the rental unit is being converted to a non-residential use and is located in a residential complex that contains five or more residential units, the landlord must give the tenant an amount equal to three months' rent or offer the tenant another rental unit that is acceptable to the tenant. See for example: NOL-07899 (Re), 2009 CanLII 77993 (ON LTB).

If a tenant is given a notice because the rental unit is being converted to a non-residential use and is located in a residential complex that contains fewer than five residential units, the landlord must give the tenant an amount equal to one months' rent or offer the tenant another rental unit that is acceptable to the tenant.

The requirement to pay compensation does not apply to most social housing rental units. See section 7 of the RTA.

Whether or not the intended activity constitutes conversion to a non-residential use is discussed in these LTB orders: TSL-66897-15 (Re), 2015 CanLII 99152 (ON LTB); TSL-12596 (Re), 2009 CanLII 51178 (ON LTB).

Whether the landlord intends in good faith to convert the rental unit to a non-residential use is discussed in these LTB orders: TSL-66668-15 (Re), 2015 CanLII 94900 (ON LTB); SOL-14849-11 (Re), 2011 CanLII 34688 (ON LTB).

Renovation/repair

If a tenant is given a notice because of extensive repairs or renovations, the tenant can choose to move back into the rental unit after the repairs or renovations are complete. The rent must be the same as the rent before the tenancy was terminated. Before the tenant moves out, the tenant must inform the landlord in writing of their

intent to re-occupy the rental unit. The tenant must also keep the landlord informed in writing of any change in their address. The landlord cannot refuse to allow the tenant to move back into the rental unit if the tenant has provided written notice.

If the rental unit is located in a residential complex that contains five residential units or more and the tenant does not give the landlord a written notice stating that they want to move back after the repairs are completed, the landlord must give the tenant an amount equal to three months' rent or offer another rental unit that is acceptable to the tenant.

If a tenant is given a notice because the rental unit is being repaired or renovated and is located in a residential complex that contains fewer than five residential units and the tenant does not give the landlord a written notice stating that they want to move back after the repairs are completed, the landlord must give the tenant an amount equal to one month’s rent or offer another rental unit that is acceptable to the tenant.

If the tenant lives in a residential complex that contains five or more residential units and gives written notice that they will be moving back into the rental unit once the repairs are complete, the landlord must give the tenant an amount equal to the rent for the lesser of three months and the period of time that the unit is undergoing repairs or renovations.

If a tenant is given a notice because the rental unit is being repaired or renovated and is located in a residential complex that contains fewer than five residential units and the tenant gives written notice that they will be moving back into the rental unit once the repairs are complete, the landlord must give the tenant an amount equal to the rent for the lesser of one months’ and the period of time that the unit is undergoing repairs or renovations.

Compensation is not required if the landlord has been ordered to do the repair or renovation or if the tenant resides in a social housing rental unit.

Whether vacant possession is necessary for the landlord to do the repairs or renovations is discussed in these LTB orders: TSL-81965-17 (Re), 2017 CanLII 28702 (ON LTB); SOL-14870-11 (Re), 2011 CanLII 101419 (ON LTB).

Mobile Homes and Care Homes

If the landlord is giving the notice because the landlord will be converting, demolishing, repairing or renovating a site on which a tenant-owned mobile home or land lease community home is located, the landlord must give the tenant: (a) a minimum of one year's notice; and (b) compensation equal to one year's rent, or $3,000, whichever is less.

There are also special rules that apply to care homes, including a requirement that the landlord make reasonable efforts to find the tenant suitable alternate accommodation.

Application and issues the LTB will address at the hearing

The landlord may file an *Application to End a Tenancy and Evict a Tenant and Collect Rent* (L2 Application) as soon as the N12 or N13 notice has been given to the tenant, but section 69(2) of the RTA states that it may not be filed later than 30 days after the termination date in the notice. If the application is filed late, it will be dismissed. The LTB schedules a hearing to consider the landlord's application and all parties have a right to attend the hearing and provide relevant evidence and submissions.

At the hearing the landlord must prove, on a balance of probabilities, that they intend in good faith to carry out the activity specified in the notice of termination. That means that the LTB must decide whether it is more likely than not the landlord will carry out the activity within a reasonable time after the unit becomes vacant.

When determining whether the landlord has satisfied the good faith requirement, the LTB may consider whether the landlord has served previous N12 or N13 notices for any rental unit, and whether the intended occupant lived in the rental unit for at least one year or whether the landlord carried out the intended activity at the rental unit. As discussed below, effective September 1, 2021 an application for termination of the tenancy based on a N12 or

N13 notice must include specified information about each notice that the landlord gave to other tenants in the previous two years.

The landlord must also prove that they have:

a. obtained all of the necessary permits or other required authority or taken; or
b. taken all reasonable steps to obtain all necessary permits or other authority that may be required to carry out the activity, if it is not possible to obtain the permits or other authority until the rental unit is vacant. [See for example: TSL-81104-17 (Re), 2017 CanLII 28544 (ON LTB).]

Required Information in the Application

Effective September 1, 2021, an application for termination of the tenancy based on a N12 or N13 notice must include specified information about each N12 or N13 notice the landlord gave to any tenant in the two years prior to the date the application was filed with the LTB. This information must be provided even if the previous N12 or N13 notice was for a different rental unit or residential complex or if the landlord no longer owns the rental unit or residential complex.

The LTB will not accept the application unless all the required information has been provided

LTB Order and Relief from Eviction

After holding a hearing, the LTB may issue an eviction order if the landlord has proven their case. The eviction enforcement date cannot be before the termination date on the N12 or N13 notice.

Even where the LTB finds that the landlord or purchaser requires the unit in good faith or intends to carry out the activity described in the notice, under section 83 of the RTA the LTB must consider, having regard to all the circumstances, whether to refuse to grant the application or to postpone the eviction. In some cases, refusing or delaying the eviction is discretionary. See for example: TSL-60770-15 (Re), 2015 CanLII 69062 (ON LTB); NOL-15753-14-RV (Re), 2014 CanLII 57596 (ON LTB); TSL-71705-16 (Re), 2016 CanLII 71624 (ON LTB); TSL-70781-16 (Re), 2016 CanLII 39812 (ON LTB); TSL-12596 (Re), 2009 CanLII 51178 (ON LTB). In other cases, refusing the eviction is mandatory. See for example: SOL-53030-14 (Re), 2015 CanLII 16020 (ON LTB); TSL-51257-14-RV (Re), 2015 CanLII 22344 (ON LTB).

If the landlord does not provide the tenant with the required compensation, as discussed above, the LTB must refuse the eviction. If the landlord pays the tenant the required compensation and the LTB dismisses the landlord's application, the tenant may be ordered to re-pay the landlord.

See also *Caputo v. Newberg*, 2009 CanLII 32908 (ON SCDC), and Guideline 7: Relief from Eviction: Refusing or Delaying an Eviction.

Landlord Gave Notice in Bad Faith

A former tenant may file a T5 Application with the LTB under section 57 of the RTA if the former tenant believes that:

a. the landlord gave a notice to a tenant under sections 48,49 or 50 in bad faith; and
b. the tenant moves out of the unit as a result of the landlord's notice or an application to the LTB or an order by the LTB based on such a notice; and
c. no person specified under the appropriate subsection has occupied the unit within a reasonable time after the tenant vacated the rental unit, or the landlord did not demolish, convert or repair or renovate the rental unit within a reasonable time after the tenant vacated the rental unit.

A T5 Application filed for this reason must be received by the LTB not more than one year after the former tenant move out of the rental unit.

As discussed below, where the landlord gave the tenant a N13 notice to do extensive repairs or renovations to the rental unit, a former tenant can file a T5 Application if the tenant gave written notice to the landlord that they intended to move back into the rental unit and the landlord has refused to allow the tenant to do this once the repairs or renovations are completed.

The LTB holds a hearing to consider the former tenant's application and all parties have an opportunity to attend and provide relevant evidence and submissions. It is the tenant, as the applicant, who must prove all three elements of the test set out above.

Examples of LTB orders finding that the tenant has satisfied the three parts of the test contained in section 57 include: SWT-95207-16 (Re), 2017 CanLII 9457 (ON LTB); TST-77957-16 (Re), 2016 CanLII 88282 (ON LTB); TST-77144-16 (Re), 2016 CanLII 88292 (ON LTB); TST-72609-16 (Re), 2016 CanLII 71210 (ON LTB); TST-63263-15 (Re), 2015 CanLII 75856 (ON LTB); TST-68404-15 (Re), 2016 CanLII 40119 (ON LTB).

Examples of LTB orders finding that the tenant has not satisfied the three parts of the test contained in section 57 include: TET-67474-16 (Re), 2016 CanLII 52833 (ON LTB); TST-63837-15 (Re), 2016 CanLII 39762 (ON LTB); TST-62541-15 (Re), 2015 CanLII 59059 (ON LTB); TST-57328-14 (Re), 2015 CanLII 93464 (ON LTB); CET-33575-13 (Re), 2014 CanLII 71654 (ON LTB).

The RTA provides that it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave the notice of termination in bad faith if the landlord:

a. advertises the rental unit for rent;
b. enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant;
c. advertises the rental unit, or the building that contains the rental unit, for sale;
d. demolishes the rental unit or the building containing the rental unit; or
e. takes any step to convert the rental unit, or the building containing the rental unit, to use for a purpose other than residential premises.

These provisions only apply during the period that begins on the date the landlord gave the tenant the notice and ends one year after the former tenant moves out of the unit.

Remedies the LTB may award

If the tenant proves all three elements of the test set out above, the LTB may order the landlord to pay:

a. a specified sum to the 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;
b. reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur;
c. an order for abatement of rent;
d. an administrative fine not exceeding the monetary jurisdiction of the Small Claims Court;
e. general compensation not exceeding one year of rent paid by the former tenant for the rental unit. The former tenant does not have to have incurred any actual expenses to request this remedy, or
f. any other order that the LTB considers appropriate, including an order allowing the tenant to move back into the rental unit if it has not already been rented to another tenant.

Who should be named as the respondent

In considering whether the former tenant has satisfied the three parts of the test contained in section 57, the LTB must consider the conduct and knowledge of the landlord who served the notice of termination. If the tenancy was terminated as a result of a notice of termination for personal use of a unit by a landlord, a specified family member or a person who provides or will provide care services, the landlord who served the notice of termination who should be named as the respondent.

If the tenancy was terminated as a result of a notice of termination for personal use by a purchaser and the former tenant is alleging that the purchaser has failed to move into the rental unit within a reasonable time after

the tenant vacated the rental unit, the purchaser should be named as a respondent in addition to the landlord who served the notice of termination. See: TST-42753-13-RV (Re), 2014 CanLII 28557 (ON LTB), upheld by the Divisional Court, *Wojcik v Pinpoint Properties Ltd.*, 2016 ONSC 3116.

Landlord Refuses to Allow Tenant to Move Back In

Where the landlord gave a N13 notice to do extensive repairs or renovations to the rental unit, a former tenant can file a T5 application if the tenant gave written notice to the landlord that they intended to move back into the rental unit and the landlord has refused to allow the tenant to do this once the repairs or renovations are completed. The LTB can award the former tenant the same remedies as those described above, including repossession of the rental unit by the tenant if it has not already been rented to another tenant.

A T5 application filed for this reason must be received by the LTB not more than two years after the former tenant moved out of the rental unit. If this two year limitation period is approaching and the landlord has not completed the repairs or renovations, the tenant may file the application, and the LTB will decide whether the hearing should be adjourned until after the work has been completed.

September 1, 2021 tribunalsontario.ca/ltb

From: cseepe aztechrealty.com <M.F.I.P.P.A 14(1)>
Sent: Friday, January 24, 2025 9:55 AM
To: clerks <clerks@oshawa.ca>
Subject: Report SF-25-02 concerning the Renovictions in Rental Units in the City of Oshawa - Deadline 4 PM January 24th, 2025

Dear City of Oshawa Mayor and Council Members,

I spent three years trying to impress upon municipal leaders that “hammer and gavel” tactics for dealing with infinitely complex housing issues that have been caused almost entirely by provincial legislation and failed judicial processes, are shortsighted, ineffective, counter-intuitive and ultimately not in the best long-term interests of the local communities.

This time, for purely selfish reasons, for which Ontario politicians have villainized landlords for decades, I support any licensing action you wish to take. I’m convinced that such actions will severely comprise all efforts to create more housing, especially housing that’s affordable, which is the *exclusive* province of small landlords. Large landlords NEVER create housing that’s affordable; they just offset those few low-rent units with the remaining tenants who overpay market rents.

Municipal licensing schemes drive away rental housing investment, leaving the ever-diminishing number of remaining operators with a market of high demand and no supply. Economics 101 states that low supply and high demand inevitably leads to higher rents or, if you continue to choke the reason(s) for investing in the residential housing business, then ultimately “no rents,” (no supply).

Tens of thousands of small Ontario landlords have already abandoned the rental housing business as best evidenced by the catastrophic failure of, and the high number of applications at, the Landlord and Tenant Board, as well as the collapse of the condo market, of which half of units were once intended to be rentals. Much of that condo rental inventory has been taken out of the market permanently. Also lost are thousands of low-cost rental properties including attics, basements, converted garages, tiny homes, coach houses, even rooming homes.

But at least the remaining rental units will be “compliant” even if they are never renovated or upgraded again since there is no business case for doing so.

Ontario holds the dubious distinction of having the fewest number of houses per capita, not only in Canada but of all the G7 nations. And Ontario is the ONLY province that lost more rental housing than it created.

You might consider asking yourselves the question that no one ever asks, “Why do “renovictions” exist at all? That’s the causal issue that no municipality can fix.

But to your local concern, there’s only one over-arching multi-faceted operative question for council – exactly how many “renovictions” have occurred in Oshawa, how many led to homelessness, and does this issue deserve more of the City’s attention, resources and financial commitment than shelters, hospitals, jobs, drug-related crime (now spilling into the streets), opioid addiction, rapidly increasing home-invasions and murders, even municipal budget management, and a swath of other societal challenges?

You’ll never legislate your way out of the housing crisis.

Respectfully,

Chris Seepe

Aztech Realty Inc.

<M.F.I.P.P.A 14(1)>

www.landlordingcourse.ca

www.landlordingbook.com

www.darksidebook.com

www.standardlease.ca

(Skill is knowledge and experience ably applied.)

Safety and Facilities Services Committee
City of Oshawa 50 Centre Street South Oshawa, ON L1H 3Z7

January 24, 2025
Re: SF-25-02 – Renovictions in Rental Units in the City of Oshawa

As professional rental housing providers in Oshawa and Toronto, we occasionally hear accounts of uninformed or unethical single-unit operators attempting to bypass the multiple layers of tenant protections outlined in the Residential Tenancies Act. However, this is not a pervasive issue. A more pressing concern is the increasing trend of single-unit operators withdrawing their basement or top-floor units from the rental market due to negative experiences with tenants. In such cases, valuable rental housing stock is removed from the market.

Most landlords do not use the N13 Notice ("Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it, or Convert it to Another Use") to renovate units. This is because the process allows tenants to return to the unit at the same rent, leaving landlords with no opportunity to recoup the significant costs of a full renovation, often ranging from $20,000 to $40,000. Instead, landlords typically wait until the unit becomes vacant. Those who do use the N13 Notice often negotiate with tenants, offering compensation for agreeing not to return after renovations—a solution that satisfies both parties.

While bad-faith actors may occasionally exploit the system, it is unclear whether additional municipal regulations would address this issue effectively. The current N13 process already includes robust safeguards, allowing tenants to request a hearing at the Landlord and Tenant Board (LTB) if they suspect a landlord is acting in bad faith. Tenants also have up to one year after vacating to file a T5 Application ("Landlord Gave Notice of Termination in Bad Faith"). If found guilty, landlords face substantial fines and compensation payments equivalent to one year's rent.

If the concern is that tenants are unaware of these existing remedies, it is unclear how new by-laws would increase awareness. The issue appears to be not a lack of regulation but a lack of understanding about the safeguards already in place.

The financial realities of the N13 process are another significant factor. Renovation costs have risen by over 15% in recent years. For properties with more than five units, landlords are required to pay tenants three months’ rent under the N13 process. This, combined with any negotiated compensation to the tenant, often makes renovations financially prohibitive. Adding municipal costs would further strain the process and potentially deter the maintenance and improvement of rental housing stock in Oshawa.

Other jurisdictions are experimenting with these regulations. Hamilton is reported to have spent $3 million and involved 27 staff to run their program. The benefits have not

matched the expense. Meanwhile, due to market forces in urban centres and reduced immigration, asking rental rates in Hamilton have decreased 5.6% for 1 bedroom units. https://www.cbc.ca/player/play/video/9.6620356

It is important to note that the ongoing shortage of rental housing stock is not due to a lack of regulations. On the contrary, over-regulation has hindered the creation of new rental units. Unusually high population inflow levels drove demand for rentals in Oshawa to peak levels last spring. Asking rents started declining in the summer and have continued to decline as shown in various surveys from Urbanation and Rentals.ca. (https://www.reminetwork.com/articles/asking-rents-in-canada-declined-3-2-in-2024/)

Moreover, data from the LTB highlights that only 1.5% of applications filed in 2022-2023 were by tenants against landlords for bad-faith notices of termination. By contrast, nearly 60% of cases were filed by landlords against tenants for failing to pay rent. For small landlords renting out a basement suite or a floor in their home to offset mortgage costs, extended periods of unpaid rent can lead to the loss of their homes. This reality, while less reported in the media, is gaining attention as small landlords increasingly share their stories.
(https://www.cbc.ca/player/play/video/9.6600642)
(https://www.cbc.ca/player/play/video/9.4219875)

As Abraham Lincoln once said, “The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all or cannot do well for themselves.” Clearly, tenants already have multiple avenues to address concerns if they believe a landlord is not acting in good faith.

We urge policymakers to consider the unintended consequences of imposing additional regulations in an already heavily regulated sector. Further burdens could inadvertently harm the very rental housing market we all seek to support and sustain.

Morgan Ste. Marie
General Manager
<M.F.I.P.P.A. 14(1)>
MORDINI
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