



## Standard Lease Template Consultation

**Submitted to:** Ministry of Housing  
**Submitted by:** The Ontario Bar Association  
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## Introduction

The *Rental Fairness Act, 2017* received Royal Assent on May 30, 2017 and established authority for the Minister of Housing to make regulations that would require a standard lease template for prescribed classes of residential tenancies (the “**Standard Lease**”).<sup>1</sup> The Ministry of Housing is now consulting on the proposed elements of that standard lease template (the “**Consultation**”).

The Ontario Bar Association’s Real Property Law executive and the Constitutional, Civil Liberties and Human Rights Law executive (the “**OBA**”) have prepared this submission to respond to the Ministry’s consultation documents.<sup>2</sup> The submission provides general comments in the initial section, and then responds to the information provided by the Ministry about the proposed form of the Standard Lease. As you know, the Ministry has proposed that the Standard Lease will have four sections relating to “Mandatory information”, “Additional information”, “Optional terms”, and finally, “Rights, responsibilities and prohibited conditions”. Our submission addresses each of these sections in turn.

## The OBA

Established in 1907, the Ontario Bar Association is the largest legal advocacy organization in the province, representing more than 16,000 lawyers, judges, law professors and students. The Real Property Law Section constitutes approximately 600 lawyers who serve as legal counsel to virtually every stakeholder in the industry, including both landlords and tenants. The Constitutional, Civil Liberties and Human Rights Law section constitutes approximately 300 lawyers would count as clients individuals from a wide range of backgrounds whose rights and interests are engaged in this Consultation, including individuals, landlords, tenants, employers, employees, governments and public interest groups. The OBA has considered the Consultation, and wishes to raise several issues for your consideration.

## General Comments

### The Need for Clarity

Our first comment is that any Standard Lease agreement prescribed by the Ministry must be written using clear language, so that it will be understood by the landlords and tenants required to adopt its content. This is particularly important since a failure to comply with the requirements of the Standard Lease agreement may violate legislation such as the *Residential Tenancies Act, 2006*

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<sup>1</sup> [Rental Fairness Act, 2017](#), S.O. 2017 c. 13. See, in particular, section 5.

<sup>2</sup> Ministry of Housing, [Standard Lease Template Consultation](#).



(the “**RTA**”)<sup>3</sup> and *Human Rights Code*<sup>4</sup> (the “**HRC**” or the “**Code**”) and result in penalties. As such, clarity should be a key goal for the Ministry as it moves forward with this initiative.

## External References

Our second comment relates to the means by which key information on residential tenancies can be communicated. In the submission that follows, we have provided input on issues that frequently arise and often result in disputes between landlords and tenants. Some of our proposals regarding information that should reside in the Standard Lease would be unnecessary with effective education for landlords and tenants on basic rights and responsibilities. We acknowledge that this function can be achieved in different ways.

The Ministry should consider including direct references in the Standard Lease to external information that landlords and tenants can access to properly explain their rights and obligations under the Standard Lease, in addition to applicable legislation such as the RTA and the Code.

Several examples of this kind of external information exist already, and in our view, have proven to be a useful source of information for individuals in the housing market. For instance:

- The Landlord and Tenant Board (the “**LTB**”) has published a brochure setting out many of these rights and obligations, entitled “A Guide to the Residential Tenancies Act”.<sup>5</sup> It is reasonably comprehensive and can be used to help both landlords and tenants understand the parameters of their leases.
- The LTB mandates that new tenants receive certain information from landlords on the commencement of a tenancy. The “Information for New Tenants” brochure is another example of a guide that is designed for tenants and prospective tenants to read quickly and provide a general understanding of a tenant’s rights and obligations.<sup>6</sup>

The LTB does not currently mandate the distribution of information regarding the Code to new tenants. Standard Lease template terms should clearly account for the rights and obligations of tenants and landlords under the Code at the commencement and for the duration of a tenancy.

In our experience, accommodation and housing remain one of the most active areas in which discrimination occurs in Ontario, and it is critical for landlords and tenants to understand the grounds of discrimination, and the application of the Code to tenancies in Ontario.

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<sup>3</sup> S.O. 2006, c. 17.

<sup>4</sup> R.S.O. 1990, c. H.19.

<sup>5</sup> Online: [http://www.sjto.gov.on.ca/documents/ltb/Brochures/Guide%20to%20RTA%20\(English\).html](http://www.sjto.gov.on.ca/documents/ltb/Brochures/Guide%20to%20RTA%20(English).html).

<sup>6</sup> Online: <http://www.sjto.gov.on.ca/documents/ltb/Brochures/Information%20for%20New%20Tenants.pdf>.



As above, this could be accomplished by providing information about the Code in the Standard Lease, either directly or by reference to external sources. Such information is already available, such as:

- The Ontario Human Rights Commission has published brochures setting out rights and responsibilities for landlords,<sup>7</sup> and another brochure for tenants, under the Code.<sup>8</sup>

## Existing Templates

We would note that several standard templates for residential tenancies are already available and in wide use across the province. The Ontario Real Estate Association and Federation of Rental-Housing Providers of Ontario both have standard lease templates and the Ministry should consider them in developing its own Standard Lease template. It would be of great assistance to landlords and tenants alike for the Ministry to provide a document highlighting the differences between the Ministry's Standard Lease template (when it becomes available) and these other, standards leases.

## Accessibility, Availability and Other Languages

A final, general comment on this consultation is the need for the template to be accessible by people with disabilities, widely and easily available to the broadest possible public audience, and available in a number of languages. Achieving these goals will ensure that tenants and landlords understand their rights and responsibilities when entering a lease.

## Mandatory Information

### Rent Increases

In our view, it should be mandatory for the Standard Lease to provide clarity with respect to rent increases. The lease should clearly state whether (or not) the tenancy agreement is subject to rent control. As Ontario's rent increase guideline applies to most private residential rental units covered by the RTA, we believe that disputes may be avoided if both parties acknowledge whether the tenancy is subject to rent control prior to execution of the lease.

## Additional Information

### Rent Deposits

In our view, the Standard Lease should include "additional information" regarding rent deposits. The definition of the term "rent deposit" should be defined, and should be limited to first and last month's rent and key/access cards.

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<sup>7</sup> Online: <http://www.ohrc.on.ca/en/human-rights-housing-overview-landlords-brochure>.

<sup>8</sup> Online: <http://www.ohrc.on.ca/en/human-rights-tenants-brochure>.



## Optional Terms

As explained by the Ministry, optional terms are terms that would be included to clarify what landlords and tenants can and cannot legally include in a lease. We propose the following terms.

### **First and Last Month's Rent**

This term would clarify that the landlord can only ask for first and last month's rent from the tenant. More than two months contravenes the LTA.

### **Unit Temperature**

This term would clarify that, in certain situations, the landlord has a responsibility to maintain a minimum temperature as set out by the relevant municipality, and that the landlord cannot contract out of this minimum temperature.

### **No Pet(s)**

This term would clarify that where a lease stipulates that a tenant cannot have any pet(s) in the unit, a tenant is permitted to do so. Some exceptions do apply, such as condominiums with a no pets clause in its delcaration.

### **No Smoking**

This term would clarify that, while a landlord can include a no smoking clause in a lease, a landlord cannot evict a tenant for smoking, unless the landlord can prove that the smoke is either bothering other tenants or damaging the unit.

Smoking may constitute an addiction, and therefore disability, for the purposes of the Code and landlords should be mindful of the duty to accommodate prior to immediately seeking an eviction. Given that smoking may constitute an addiction, landlords should also exercise extreme caution when including a no-smoking clause in a lease agreement. Such a term may discriminate against a person who suffers from an addiction, and so these types of terms need to be implemented on a case by case basis, after making all reasonable inquiries with the tenant as to their needs.

### **No Marijuana/Drug Use**

This term would clarify that, as with smoking, an addiction to drugs, or the use of drugs/marijuana for medical purposes, can be scenarios classified by the Code under the ground of disability. Landlords should exercise caution when including "no drugs" or "no marijuana" clauses in leases, particularly in light of the possible legalization of recreational marijuana use. All such clauses need to be examined on a case by case basis, and if either party is unsure then they can seek legal advice for assistance or clarification.

### **Security or Damage Deposits**

This term would clarify that it is illegal for a landlord to ask for an extra month's rent to be applied as a deposit to be used against damages or for the rental of furniture in the unit.



## **Landlord's Responsibilities**

This term would clarify the landlord's responsibilities under the lease. For example, the RTA dictates that a landlord shall provide and maintain the tenant's unit in good state of repair and must comply with health, safety, housing and maintenance standards, such as shoveling snow and cutting the grass. The landlord cannot transfer its responsibilities onto the tenant under the lease. However, the landlord and tenant can agree in a separate agreement that the landlord shall pay the tenant if the tenant agrees to take on these responsibilities.

## **Post-dated Cheques**

This term would clarify that a landlord cannot force a tenant to provide post-dated cheques. However, the landlord and tenant can agree to this arrangement.

## **Additional Charges**

This term would clarify the tenant's responsibility to pay for certain charges or fees, subject to the terms of the lease, like hydro, water, cable, and internet.

## **Tenant Insurance**

This term would clarify that the landlord's ability to require the tenant to obtain certain forms of insurance. A landlord can require a tenant to obtain liability insurance, but cannot legally require the tenant to obtain content insurance.

## **Accessibility**

This term would clarify the rights and responsibilities of landlords and tenants with respect to accessibility. Landlords and tenants can arrange to have accessibility and/or accommodation plans in place for tenants in need of such an arrangement in connection with an Ontario *Human Rights Code* ground. Tenants cannot be denied housing or required to pay any extra amounts for those arrangements.

# **Rights, responsibilities and prohibited conditions**

## **Financial Penalties**

In addition to the information that the Ministry proposes to include in the Standard Lease regarding rights, responsibilities and prohibited conditions, the Ministry should include information regarding financial penalties. The RTA prohibits the landlord from collecting penalties for lease violations. However, it is still common for landlords to collect, or attempt to collect, penalties in the form of additional charges for repair of undue damage, or for exempt chargebacks.<sup>9</sup> In the condominium context, unit owners are often required to indemnify the condominium corporation for the actual costs of repairs following damage. Landlords can then charge those costs back to the

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<sup>9</sup> See O. Reg. 516/06.



tenant. The Standard Lease template should clarify the rights and obligations of landlords and tenants with respect to these kinds of charges.

### **Maximum Occupant Limits**

The Ministry should also include information regarding any occupancy limits affecting the leased premises. While genuine building restrictions may exist (including additional charges imposed by a condominium corporation for actual occupancy), it is not permissible under the Code to impose occupancy limits to prevent certain groups from obtaining accommodation, and any restrictions must be compliant with the Code. Whether additional charges for actual occupancy can be passed along by a unit owner to tenants should be addressed in the Standard Lease.

### **Landlord and Tenant Supports**

In order to discourage the use of unenforceable conditions in leases, the Standard Lease's section on rights, responsibilities and prohibited conditions should include information on supports that landlords and tenants can access if a need arises. For instance, if the landlord and tenant have any questions or concerns, it is recommended that they seek legal counsel (i.e. through the OBA's Find a Lawyer directory,<sup>10</sup> or the Law Society's Lawyer Referral Service<sup>11</sup>) or to reach out to one of the following organizations for assistance:

- **Community Legal Clinics:** throughout Ontario, community legal clinics give free assistance to tenants who have low incomes. To find the nearest community legal clinic, go to Legal Aid Ontario's website at [www.legalaid.on.ca](http://www.legalaid.on.ca).
- **Rental Housing Investigations:** If a landlord harasses, threatens to evict illegally, comes into the unit without permission, or violates the tenant's rights in some other way, the tenant can contact the Ministry's Rental Housing Enforcement Unit by going to the Unit's website at [www.mah.gov.on.ca/ie.u](http://www.mah.gov.on.ca/ie.u).
- **Landlord and Tenant Board:** The Board cannot provide legal advice, however, individuals can get notice and application forms, and general information about landlord and tenant issues. The Board's website is [www.ltb.gov.on.ca](http://www.ltb.gov.on.ca).
- **Human Rights Legal Support Centre:** The Centre can provide individuals with legal help with a human rights complaint and talk to you about your rights. The Centre's website is [www.hrlsc.on.ca](http://www.hrlsc.on.ca).

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<sup>10</sup> OBA Find a Lawyer Directory.

<sup>11</sup> Law Society of Upper Canada. [Law Society Referral Service](#).



## Permitted Documentation

Another step that the Standard Lease could take to discourage the use of unenforceable conditions is to include information on documentation a landlord can legally request from an applicant/tenant within the Standard Lease's section on rights, responsibilities and prohibited conditions.

A landlord is only allowed to request information from applicants that will directly assist the landlord to decide whether or not to rent to the applicant and does not permit the landlord to make that decision based on a prohibited ground in the Code. The Code stipulates that a landlord can seek from an applicant their rental history, income, credit references and/or credit checks. However, a lack of rental or credit history should not count against the applicant as this can be grounds for discrimination (for example, a newcomer to Canada may not have a rental history or a younger renter may be attempting to rent their first property. Restricting opportunity may be a violation of the Code on the basis of place of origin or age for in such circumstances).

Once an applicant becomes a tenant, then the landlord may be able to request additional information from the tenant (like emergency contact information and vehicle identification information).

In addition, Landlords are required to comply with personal information and privacy legislation, such as the *Personal Information Protection and Electronic Documents Act*. Landlords subject to the *Act* must obtain an individual's consent when they collect, use or disclose the individual's personal information. The landlord can only use a tenant's personal information for the purposes for which it was collected, and is responsible for ensuring the personal information will be protected by appropriate safeguards.

## Human Rights Code Grounds

The third element that this section should include to discourage the use of unenforceable conditions is information for landlords and tenants respecting the prohibited grounds of discrimination in Ontario.

We propose that each Standard Lease agreement contain a term that puts both the landlord and tenant on notice regarding their rights and obligations under the Code and, in particular, that everyone has the right to equal treatment in housing without discrimination and harassment.

## Conclusion

Thank you for the opportunity to provide these comments. We would be pleased to discuss any of these proposals with you, and look forward to reviewing the Standard Lease in the near future.