

Getting Rid of Tenants for the Sale



By Brian Madigan LL.B.

This is not going to be the easiest thing to do, but it can be done. Sometimes, tenants are simply a liability. They are rude and objectionable and nobody wants them. And, what's more, no one wants your building with these undesirable tenants.

So, the question is how do you get rid of them?

The best solution is probably to sell the building to a new owner who will arrange to terminate the tenancies. This is a reasonable course of action and makes a great deal of sense. In fact, it's often wise to suffer a little depreciation on the purchase price if your purchaser is willing to assume them.

There are some special rules relating to small landlords who have 5 or fewer residential tenants. This applies to a great number of small plazas, strip malls, four-plexes and the like.

The first item to be considered is the applicable legislation. The *Residential Tenancies Act* replaced the *Tenant Protection Act* in January 2006. By now, it is expected that most residential landlords will be aware of its existence and will be complying with the new legislation. The Act applies to all matters relating to a residential tenancy. The parties cannot opt out of the protections offered by the Act. Any such provision is void as against public policy and will not be enforced by the Courts. The Act applies, and that's it. There's no way around it.

So, you had better become familiar with the rules. Assuming that you wish to sell your small building, and the purchaser does not wish to assume your tenants, what do you do?

Let's also assume that your tenants have no leases, they are there simply on a month to month basis. If they do have leases, then there are some ways mentioned later to terminate prior to expiration of the term. Or, you can always buy them out.

Here is a customary termination provision at the end of the lease term:

Notice, landlord personally, etc., requires unit

48. (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by,

- (a) the landlord;**
- (b) the landlord's spouse;**
- (c) a child or parent of the landlord or the landlord's spouse; or**
- (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.**

You will notice that it is somewhat restrictive. Personal occupancy is a requirement. It is a must. And, it has to be a close relative or a caregiver.

The notice must provide at least 60 days to vacate. This means that a notice for the end of June must be given before May. There are special provisions to treat February as a full 30 day month, whether it actually be 28 or 29 days. Thus, a notice to vacate by the end of February must be given on or before 1 January.

Once the tenant receives the notice, the tenant may give notice to leave after 10 days. So, the landlord who might ordinarily expect to receive two full months rent, may only get 10 days of rent. But, that's the law, and one thing that you might have imagined is that the legislation is very pro-tenant.

In our case, the building is to be sold. Let's have a look at another similar provision:

Notice, purchaser personally requires unit

49. (1) A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

- (a) the purchaser;**
- (b) the purchaser's spouse;**
- (c) a child or parent of the purchaser or the purchaser's spouse; or**
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care**

services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

This time, the complex must be small containing no more than 3 residential units. It could have 10 commercial tenancies but that doesn't matter. It's only the number of residential units that counts.

Here, the present owner can give notice on behalf of the new owner. However, examine the requirements closely, the notice is restricted to good faith residential occupancy. The conversion of the unit to other purposes does not count.

Again, 60 days notice must be given by the present owner and the tenant automatically acquires the right to leave (provided he gives proper notice) after 10 days.

It is noteworthy that there is no definition of a small building. So, you will see different rules from clause to clause. Sometimes a small building will be 3 or fewer, sometimes 4, and sometimes 5. You will have to look at the particular paragraph.

Not all new purchasers will have an instant family that is desirous of moving into the premises. Maybe they would like to use it for another purpose. They may wish to convert the residential premises into retail, commercial, office or industrial uses that might otherwise be compatible with the remainder of the building.

The applicable section of the Act is:

Notice, demolition, conversion or repairs

50. (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,

(a) demolish it;

(b) convert it to use for a purpose other than residential premises; or

(c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.

The owner of the facility may give notice of demolition, conversion or extensive repairs. These reasons will justify a termination of the tenancy. The notice period in these circumstances moves up to 120 days or four full months. Again, the tenant acquires the right to vacate on 10 days notice at anytime throughout this 120 day period.

Also, it should be noted that if extensive repairs are being undertaken to the premises, then the tenant has the right of first refusal to occupy the premises once again. The landlord is obligated to inform the tenant of this fact. This provision applies to all residential complexes, not just small ones. There are a few more rules that you need to consider in such circumstances:

Compensation, demolition or conversion

52. A landlord shall compensate a tenant in an amount equal to three months rent or offer the tenant another rental unit acceptable to the tenant if,

(a) the tenant receives notice of termination of the tenancy for the purposes of demolition or conversion to non-residential use;

(b) the residential complex in which the rental unit is located contains at least five residential units; and

(c) in the case of a demolition, it was not ordered to be carried out under the authority of any other Act.

Yes, you actually read this quite correctly. If the landlord wants to improve his building in any way, he must provide compensation to the tenants, equal to 3 months rent. So, tearing it down or converting it to a commercial use requires payment of the 3 month penalty. The only saving grace this time is that the number of residential units must be 5 or more. If, the landlord has another unit in the same complex that is available, that unit could be offered in lieu of compensation.

The corollary of this proposition is that a landlord of a small building, (in this paragraph meaning 4 or fewer residential units) does not have to pay any compensation by way of penalty.

There is also a similar provision concerning extensive repairs:

Tenant's right to compensation, repair or renovation

54. (1) A landlord shall compensate a tenant who receives notice of termination of a tenancy under section 50 for the purpose of repairs or renovations in an amount equal to three months rent or shall offer the tenant another rental unit acceptable to the tenant if,

(a) the tenant does not give the landlord notice under subsection 53 (2) with respect to the rental unit;

(b) the residential complex in which the rental unit is located contains at least five residential units; and

(c) the repair or renovation was not ordered to be carried out under the authority of this or any other Act.

Again, you will notice similar provisions. Five or more units, and the tenants gets at least 120 days notice and 3 months compensation. You might wonder who really owns the building. If this potential liability were to be assessed against the value of the building it could make a rather substantial dent in the equity.

At the **end of the term** of any lease, or in the case of a monthly tenancy, the landlord can give notice of termination upon 60 days notice for the following reasons:

- 1) the tenant persistently *failed to pay* the rent on time,
- 2) *misrepresentation of income* by tenant (ie. qualifying for low rental housing),
- 3) *illegal acts*, trade or business being conducted on premises,
- 4) wilfully or negligently causes undue damage to the premises,(10 days notice is sufficient),
- 5) conduct by the tenant that substantially *interferes* with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant,
- 6) conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord (applies only to small buildings of 3 or fewer residential units, and 10 days notice is sufficient),
- 7) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously *impaired the safety* of any person, (10 days),
- 8) if the number of persons occupying the rental unit on a continuing basis results in a contravention of health, safety or housing standards required by law, (20 days),
- 9) within six months after the notice was given to the tenant, (and the termination cancelled) an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination (this time 14 days).

Accordingly, any of the above matters will also constitute grounds for the termination of the tenancy.

But, before we leave entirely the sale issues what if the tenant simply won't leave. Then, the landlord has to bring an application under the Act to terminate the tenancy and evict the tenant.

Landlord or purchaser personally requires premises

72. (1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 48 or 49 unless the landlord has filed with the Board 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.

And, if the building is to be demolished, converted or extensively repaired:

Demolition, conversion, repairs

73. The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 50 unless it is satisfied that,

(a) the landlord intends in good faith to carry out the activity on which the notice of termination was based; and

(b) the landlord has,

(i) obtained all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, or

(ii) has taken all reasonable steps to obtain all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, if it is not possible to obtain the permits or other authority until the rental unit is vacant.

You will appreciate that it is not quite so easy to prove all this. In most cases, the building permits for the work will be required. At the very least, the co-operation of the municipality would have to be sought so as to encourage the Landlord and Tenant Board that the work is to be legitimately undertaken.

That brings us back to the basic question. What do you do, if the purchaser will not accept your tenants and insists upon vacant possession?

Here are your options:

1) have the tenant agree to leave prior to closing,

- 2) if necessary, offer the tenant some monetary inducement to leave,
- 3) give 60 days notice requiring possession for occupancy by your family,
- 4) give 60 days notice requiring possession for occupancy by the purchaser's family,
- 5) give 120 days notice requiring possession for demolition, extensive repairs, or conversion to non-residential uses,
- 6) pay compensation (if required), namely 3 months rent provided total number of units is equal to five or more.

Unquestionably, if there are unruly and undesirable tenants, let the other party deal with them. That's probably the simplest advice that can be given to both vendors and purchasers. However, fundamentally, the tenants belong to the owner, and they are the owner's responsibility. Rather than being an asset, they are really a liability, and the property is worth less with them in it. So, the easiest and quickest way would be to reoccupy the premises yourself with your family. At the same time, be aware that a reasonable amount of compensation might have to be offered to the tenants in order to induce them to move. But, it should be worth it. The building gets sold at a higher price without the tenants.

Note: paragraphs appearing in bold print are direct quotes from the *Residential Tenancies Act*.

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty
905-796-8888
www.OntarioRealEstateSource.com*