

# RENT INCREASES



## STATUTORY REFERENCES

*Residential Tenancies Act (RTA) sections:*

1(1)(e)	Definition of fixed term tenancy	13	Implied periodic tenancy
1(1)(f)	Definition of landlord	14	Notice of increase in rent
1(1)(i)	Definition of periodic tenancy	26	Landlord's remedies
1(1)(j)	Definition of prescribed	37	Tenant's remedies
1(1)(k)	Definition of rent	39	Compensation to tenant
1(1)(l)	Definition of residential premises	41	Application for remedy to court
1(1)(m)	Definition of residential tenancy agreement	42	Order of court
		57	Service of notices
1(1)(q)	Definition of tenancy month	58	Satisfaction of service requirement
1(1)(r)	Definition of tenancy week	60	Offences and penalties
1(1)(s)	Definition of tenancy year	70	Ministerial regulations
1(1)(t)	Definition of tenant		
1(2)	Reference to tenant		
			Ministerial Regulations sections:
		3	Rent increase
		11	Offence

## GUIDELINES

The RTA defines rent as the consideration to be paid by a tenant to a landlord under a residential tenancy agreement, but does **not** include a security deposit.

### FOR A NEW TENANT

When a landlord and a tenant enter into a residential tenancy agreement, there is no limit on how much rent they can agree to or the services that rent will include. For example, the rent may include utilities and one parking space.

The RTA does **not** control how much rent can be charged or how much rent can be increased.

## FOR AN EXISTING TENANT

Rent **cannot** be increased unless 365 days have passed since the commencement of the tenancy or the last increase in rent, whichever is later. This applies to both periodic and fixed term tenancies. If the 365th day occurs during the term of a fixed term tenancy, the rent **cannot** be increased until that fixed term residential tenancy agreement ends.

Where a tenant does **not** give a landlord a notice of termination after receiving a proper notice of rent increase from a landlord, the tenant is deemed to have accepted the rent increase.

## NOTICE REQUIREMENTS

The notice of rent increase **must** be in writing and include all of the following:

- The effective date of the increase,
- The landlord's signature, and
- The date the landlord signed the notice.

A notice of rent increase has to be served on each tenant and **cannot** be posted in the common areas to increase rents for all tenants.

A notice that does not contain all the above mentioned legal requirements is void and the rent can **not** be increased until the landlord serves a notice, which contains all of the legal notice requirements.

## CONDOMINIUM CONVERSIONS OR MAJOR RENOVATIONS

If a landlord serves a notice of termination because the residential premises **must** be vacant to convert to condominiums or for major renovations, the rent **cannot** be increased after the notice of termination is served.

## PERIODIC TENANCIES INCREASE NOTICES FOR EXISTING TENANCIES

Rent **cannot** be increased under a periodic tenancy unless the tenant has been properly served, before the increase is to take effect, with a written notice that contains all of the required information.

Tenants have to be given the proper period of notice to increase the rent. Depending on the type of periodic tenancy, a landlord is required to provide the following amount of notice:

- For a periodic week-to-week tenancy, at least 12 full tenancy weeks before the date on which the increase is to be effective.
- For a month-to-month tenancy, three full tenancy months before the date on which the increase is to be effective.
- For any other periodic tenancy, 90 days before the date on which the increase is to be effective.

A notice that is **not** served within the proper period of notice is void and the rent **cannot** be increased until the landlord serves a written notice, which contains all the required information, within the proper period of notice.

As an example, for a month-to-month tenancy, the notice has to be served by May 31, 2012 for the rent to increase on September 1, 2012.

If the residential tenancy agreement provides for a period of notice longer than the above, the landlord **must** give at least that longer period of notice before increasing the rent or recovering any additional rent resulting from the increase.

Tenants **cannot** waive their rights to receiving the proper period of notice for rent increases as part of a written or oral residential tenancy agreement. Landlords and tenants can, however, agree to a longer period of notice. This longer period of notice then becomes the minimum time frame for the parties.

## **FIXED TERM INCREASE NOTICES FOR EXISTING TENANCIES**

A fixed term tenancy is a tenancy agreement with a start date and an end date for the tenancy.

A landlord and tenant can negotiate a rent increase for a fixed term tenancy if there has **not** been a rent increase within the previous year (365 days) or since the start of the tenancy, whichever is later. If the 365th day occurs during the term of a fixed term tenancy, the rent **cannot** be increased until that fixed term tenancy agreement ends.

If a fixed term tenancy is for any period of less than a year, the rent **cannot** be increased for that tenant unless 365 days have passed since the start of the tenancy or since the last rent increase, whichever is later.

This applies even if a fixed term tenancy agreement has a clause that states the rent will automatically increase on a date during the fixed term contract.

## **INCREASE NOTICES FOR EXISTING HYBRID TENANCIES**

A hybrid tenancy is a fixed term tenancy for a set period of time that becomes a periodic tenancy after that fixed period.

A hybrid tenancy is a residential tenancy agreement that starts as a fixed term tenancy for a set period of time, e.g., six months or a year, then at the end of the fixed term the tenancy becomes a periodic tenancy, e.g., a month to month tenancy agreement.

A notice of rent increase can be served during the fixed portion of the tenancy to take effect in the periodic portion as long as the above rent increase provisions for periodic and fixed term tenancies are applied. If a hybrid lease has a six month fixed term before becoming a periodic tenancy, the rent can only be increased if there has **not** been a rent increase within the previous 365 days or if 365 days have passed since the start of the tenancy, whichever is later.

## **FAULTY NOTICES – RENT INCREASE NOTICE NOT BINDING**

There is no option to correct a notice that does **not** comply with the legal requirements. A new notice has to be served with all the proper legal requirements.

When tenants receive faulty notices, they are required under common law to serve the landlord with an objection to the rent increase, stating the notice is defective because it does **not** comply with the legislation. (The common law principle requires a tenant who feels wrongly dealt with, to bring their objection to the attention of the landlord as soon as possible.)

The written notice of objection to the faulty rent increase notice should be served on the landlord at any time before the date the rent is due. A copy should be kept by the tenant.

For example, if a notice to increase rent does **not** include the legal requirements, it is void and **not** binding. If a landlord only gave two months notice to increase rent to a monthly periodic tenant, the rent increase is void and **not** binding. The landlord **cannot** simply add a month to the effective date of the increase set out in the notice that is void and **not** binding. A landlord **must** serve a new written notice of rent increase that includes the legal requirements.

A tenant who pays an increase in rent based on a notice that does **not** comply with the requirements may recover the amount of the increase by applying to court or RTDRS for an abatement of unlawful rent. This application should be filed within two years after the unlawful amount was collected. The amount of rent charged may be unlawful if:

- A landlord gave a notice of rent increase that was **not** valid (for example, a tenant was **not** given the proper amount of notice to increase the rent).
- A landlord increased the rent before 365 days have passed since the last rent increase or before 365 days have passed since the commencement of the tenancy.

## **UTILITIES**

Landlords **cannot** require tenants to pay utilities after a tenancy has started if the residential tenancy agreement:

- Contains express wording that the utilities are included in the rent,
- Is silent on who is responsible for utilities, but the landlord has always taken a portion of the rent to pay the utilities.

Landlords and tenants can mutually agree that utilities will no longer be included in the rent.

## **PARKING FEES**

There is no requirement for a rent increase notice when a landlord and tenant agree to add a parking stall to a residential tenancy agreement.

If a residential tenancy agreement states that parking fees are included in the rent, then an increase for parking charges is subject to the rent increase notice provisions.

## PRACTICAL APPLICATIONS

A landlord and tenant can mutually agree to changes in the residential tenancy agreement as long as the changes do **not** take away the tenant's rights under the RTA, such as the right to be served a legal notice.

If the increase would cause a hardship, tenants can discuss the possibility of a different rent increase with landlords.

If tenants decide **not** to pay the increased rent, they should take appropriate steps to end the tenancy and vacate the residential premises before the date of the rent increase (see Termination of Tenancy section).

If a tenant stays in the residential premises after the date the rent increase is to be effective, the tenant has accepted the increase.

The law is clear that the landlord is entitled to have the rent paid in full when it is due. If a tenant runs into a problem paying the rent and lets the landlord know beforehand what the problem is, a landlord may let the tenant stay and pay the rent later or over a period of time. But, the landlord is under no obligation to do this.

