

## TENANT PROTECTION ACT:

### *Sharing a Kitchen and/or Bathroom*

The Tenant Protection Act was proclaimed into force on June 17, 1998. The new legislation replaces Part IV of the landlord and Tenant Act, the Rent Control Act, the Rental Housing Protection Act, the Municipal Amendment Act, the Land Lease Statute Law Amendment Act and the Residents' Rights Act. This is one in a series of information sheets developed by Landlord's Self-Help Centre to help landlords understand changes to their rights and responsibilities that has resulted from the implementation of the Tenant Protection Act.

*Does the Tenant Protection Act recognize that accommodation that requires a landlord and tenant to share a kitchen and/or bathroom facilities are different from a self-contained unit?*

The Tenant Protection Act establishes and defines several different exemptions to the legislation in section 3 of the Act. The Tenant Protection Act has excluded rental agreements that require the owner of the property or members of the owner's immediate family to share a kitchen and/or bathroom facility with a renter from the legislation. The Tenant Protection Act states the following:

*(i) "Living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the same building in which the living accommodation is located"*

*I am the landlord but not the owner of the property, does the exemption respecting shared facilities apply to my rental situation?*

No, the exemption to the Tenant Protection Act applies only to the "owner" and the owner's immediate family members as defined in section 3(i) of the Tenant Protection Act. If you are not the owner of the property but have assumed the role of "landlord", your rental relationship is governed by the Tenant Protection Act and is subject to the same termination procedures as any other type of rental unit.

*How do owners who are exempt from the legislation terminate a rental relationship?*

Since the rental accommodation is exempt from the legislation there are no specific guidelines for the termination of the rental arrangement. However, Landlord's Self-Help Centre strongly recommends that landlords of such accommodation advise the occupant/renter, in writing, of the owner's intent to terminate the rental agreement.

*Is there any specific form of notice that must be given in an exempt situation?*

No, there is not any particular form which must be used when giving notice to vacate. Landlord's Self-Help Centre recommends that the owner give notice to the renter in writing and keep a copy of the notice for their records. We also recommend that the owner specify the date on which the occupant/renter must vacate the premises and state that the rented premises are exempt from the Tenant Protection Act because facilities are shared with the owner or members of the owner's immediate family.

*What notice period is required to terminate an exempt rental agreement?*

Since the Tenant Protection Act does not govern this type of rental accommodation, the notice provisions and notice periods established in the Act *do not apply*. Landlord's Self-Help Centre suggests that the owner rely on their own good judgment when terminating an exempt rental agreement and use the rental period

(weekly, bi-weekly or monthly) as a guideline for the amount of notice to be given.

*What happens if the renter refuses to vacate after receiving notice?*

If the renter/occupant fails to vacate the premises after notice is given, the owner may take steps to recover possession of the premises. The owner may change the locks to the premises once the date of termination has passed, however, this may result in police involvement.

landlord's Self-Help Centre strongly recommends that the owner be prepared with documentation that will support his/her claim to exempt status if police assistance is sought, that includes the following:

- o the Deed or Title to the property;
- o a copy of section 3(i) of the Tenant Protection Act; and
- o a copy of the written notice given to the tenant.

Note: Property owners often seek the assistance of the local police division prior to changing the locks in anticipation of the need for their assistance. The police department is not obliged to provide assistance with the recovery of a rental unit and may be reluctant to do so.

*What action can be taken by the renter if they do not want to vacate?*

The occupant/renter may dispute that the rental agreement is excluded from the Tenant Protection Act. The Ontario Rental Housing Tribunal has established a process whereby a landlord or a tenant/occupant may apply to the Tribunal to determine whether the Act applies by filing a Form A1 -Application About Whether the Act Applies.

*What is the procedure if an 'Application About Whether the Act Applies' is filed?*

The Form A1 -Application About Whether the Act Applies may be filed with the Ontario Rental Housing Tribunal either by a landlord or by a tenant. The application is used to determine whether the Tenant Protection Act applies to a particular rental unit or situation, it was not established to address shared facility exemption questions alone. The process involved when such an application is filed involves the following steps:

- o An A 1 Application must be completed and filed with the Ontario Rental Housing Tribunal. The application must contain details about why the applicant believes the Tenant Protection Act does or does not apply.
- o The applicant must pay a \$45 filing fee to have the application processed and hearing date scheduled.
- o The Tribunal will issue a Notice of Hearing. The Notice of Hearing must be served on the respondent at least 10 days before the scheduled hearing date. The respondent must also receive a copy of the A 1 Application.
- o The Applicant must file a Certificate of Service with the Tribunal to certify that the Notice of Hearing and A 1 Application has been served on the respondent.
- o An adjudicator will preside at the hearing, which are generally conducted in person.
- o Once the adjudicator has heard the parties and reviewed any evidence that may be offered a decision may be announced at the hearing. Generally, the parties to the application will receive the Tribunal's written decision or order by mail within 10 days of the hearing.

*How would making an A 1 Application and an order benefit a landlord?*

If the landlord obtains an order that reinforces the exemption to the legislation, possession of the premises may be easily recovered without opposition from the occupant. An order will provide documentation of the Tribunal determinations for future renters.