



## ARTICLES

### Never Lease to Tenants ... Only Rent

Creating the Ideal Rental Housing Agreement

You'll never appreciate the power and security of your rental agreement until the day you're up against a disgruntled tenant, or worse, a professional tenant who bent upon extracting maximum financial compensation from you, with the sometimes biased help of the landlord and tenant Board (LTB), landlord-unfriendly municipalities, tenant advocacy groups, tenant boards, the vagaries of the judicial system, and all the political parties that pander to the large voter base of tenants.



Yes, I'm over-exaggerating for effect, but the dangers of being substantially financially hurt by "the system" are real and more common than you may know.

I never use leases with my tenants. A lease is a legally binding contract that grants a tenant the right to use your property for a specified period in consideration of rent or other compensation.

Many investors and lenders love to have every tenant on a lease because they believe it stabilizes a property's income stream. But a landlord gives up certain rights under the Residential Tenancies Act (RTA), with little *real* value remaining in favour of a lease.

With a lease, you can't undertake any of the no-fault notices of termination such as landlord's use, purchaser's use, or renovation and demolition during the term of a lease, and you can't serve a notice to evict a tenant (N8) for persistently late rent payments.

From a practical perspective, you're unlikely to collect on the shortfall in rent from a tenant who

moves out early either. Any party "injured" by a breach of almost any kind of agreement must nevertheless make every effort to mitigate their losses. This means you have to try to find another tenant as soon as possible. If you do find a tenant then you can only demand the rent for whatever time the unit was actually vacant.

You can't go to the LTB to collect the balance of rent owed. The LTB has no jurisdiction over leases. You must go to Small Claims Court.

On a positive note, when making a claim with the LTB, rent can comprise not only the unit itself, but also utilities (if included in the rent), parking, storage lockers and anything else that was reasonably

agreed upon (and not in contravention of the RTA) in your Rental Agreement as being included in the rent.

And finally, have you ever tried to enforce a monetary judgment when the tenant doesn't want to be found or is self-employed? The first thing you have to do is find out where the tenant lives in order to serve notice of the claim. How much time would that would take? Where do you begin? How much would it cost?

That's why I only offer a month-to-month rental agreement. You can get pretty good ones by joining certain landlord associations or hiring a real estate paralegal who likely has a boilerplate already. Most





## ARTICLES

### Never Lease to Tenants ... Only Rent Creating the Ideal Rental Housing Agreement

property managers have them, although they range widely in quality, currency, and scope of protection.

My agreement is very robust, comprising three pages for the agreement itself and another three pages of Schedule A that outlines the tenant's and landlord's responsibilities to each other. I believe a well-drafted rental agreement alone usually encourages professional tenants to look for easier prey.

The very best course of action a landlord can take in today's heavily-regulated rental housing industry is to know all the ways you could get into trouble and then conscientiously and tenaciously screen every applicant to weed out potential problems. The next

wording and a proper agreement structure created for you.

- Identify every person living in the unit. Make it clear that only those named can occupy the unit, allowing for occasional overnight guests or vacationing relatives. Anyone else should be regarded in legalese as a trespasser.
- Your agreement should terminate thirty days after a tenant's death.
- Rent is always paid one month in advance, on the first of each month.
- Spell out the rent in detail. Here's a handy table:

Paid FMR Amt	\$	Paid FMR Date		NSF Charge	\$40.00
Paid LMR Amt	\$	Other Amt(s) Paid	\$	Key Replaced	\$20.00
Electricity	Tenant Pays	Description of Other Amounts		Administration Fee (collect utilities, lock-outs, etc.)	\$60.00
Storage Locker	\$5.00	Storage Locker #			
Parking	\$20.00	Parking Space1 #		License Plate 1	
Total Rent	\$	Parking Space2 #		License Plate 2	
Tenant's Email Address					

*Spell out the rent in detail.*

most important protection tool is to try to steer clear of the LTB. A strong, balanced, legally-correct, and thoughtful rental agreement can go a long way to keeping you out of harm's way.

Here are some constructs for your rental agreement but don't use it as it. Have proper legal

- If the tenant fails to pay their utilities, you may pay them and then collect from the tenant, plus an administration fee, as rent.
- Make the agreement "joint and several" if more than one tenant occupies the unit, meaning all tenants are, or any one tenant is, responsible for honouring the agreement,



## ARTICLES

### Never Lease to Tenants ... Only Rent Creating the Ideal Rental Housing Agreement

including payment for the whole rent.

- Identify all included and excluded amenities. Here's another handy table:

agreement between that other person and you.

- In the event a tenant goes bankrupt, make

Heat	Hydro	Water	Fridge	Stove	Clothes Washer	Clothes Dryer	HWT	Parking	Phone	Internet	Cable	Dish Washer	Air Con.	Garbage Compactor	Storage Locker	Heater	Humidifier	Other Appliances
No	No	Yes	Yes	Yes	Not allowed	Not allowed	Yes	Extra	No	No	No	Not allowed	Written permission from landlord	Not allowed	Extra	Written permission from landlord	Written permission from landlord	Written permission from landlord

*Spell out the rent in detail.*

- Make certain that you have obtained permission to undertake a credit check of the tenant. Then make absolutely certain you do the credit check. Treat any inaccurately provided information in legalese as fraudulently provided.
- Tenant should understand that non-payment, late payment, or breach of the terms of this Agreement may be reported to a credit agency, and may create a negative credit record.
- Note the RTA rules about changing of locks.
- When your instincts say the tenant is good but the credit report doesn't support it, get a guarantor and check them out thoroughly.
- Make sure that, just because someone else paid the tenant's rent, that doesn't create an



certain you as landlord are ranked as a preferred creditor.

- Make certain you've equipped the unit with a smoke detector, and that the tenant has represented in writing that the device was in good working order when they moved in. The tenant must notify you immediately in writing if the device stops working.
- State that the agreement constitutes the only understanding between you and them. There are no other verbal statements, representations, warranties, etc. between you.

**Schedule A** lists all the rules and regulations of the rental unit. **The tenant ...**

- Must diligently practice energy conservation—don't waste water, electricity or heat. Don't run water that's not being used, leave lights and appliances on when not needed, or leave exterior doors or windows open when the heat is on.



## ARTICLES

### Never Lease to Tenants ... Only Rent

#### Creating the Ideal Rental Housing Agreement

- Must take care of the unit—clean and maintain floors, walls, fixtures, appliances etc.
- Is responsible for all consequences, including repair costs, arising from their or their guests' willful or negligent conduct, including admission of creatures/pests of every kind, weather elements (rain, snow, dust, etc), water left running, or misconduct of other occupants.
- Can't make alterations without your written approval, including hooks, screws, stick-on hangers, nails, wallpaper or other adhesive wall coverings, or paint of a colour not approved by you.
- Must not in any way, directly or indirectly, do or cause anything that would interfere with the rights of other tenants or the landlord (called the "right of private enjoyment"). This may include noise, noxious odours, possibly smoking, fighting, abusive language, unusual hobbies, etc.
- Must allow for move-in, move-out, and interim inspections by the landlord at reasonable times, with notice (generally dictated by the RTA), especially to inspect smoke detectors. Take photos as evidence of the state of the unit and smoke detector at move-in and move-out, and have tenants date and sign them.
- Agrees to pay for damage to walls, unplugging plumbing, windows damaged because they were left open during inappropriate weather conditions, damaged to, or missing doors, windows, screens, mirrors, etc., repairing cuts, burns, or water damage to flooring, etc.
- Uses the parking space or lot only for parking their operational vehicle. The landlord should have no liability whatsoever, visitors can use only designated spaces, illegally parked vehicles will be towed, and the tenant must clean up all chemical substance spillage/leakage. There should be no parking of non-operational (including unlicensed) vehicles, conducting of repairs, or washing.
- Must ensure "No Parking" areas and fire routes are respected. Retain the right to make revoke or alter regulations from time to time regarding the use of parking space and the access routes. Allow for towing at the tenant's cost.
- Shall not hold the landlord liable for damage caused by the landlord failing to keep the parking space free from snow and ice or any other matter.
- Agrees to provide the landlord with the keys to the vehicle, or with the name of a person having access to the keys to the vehicle, if the





## ARTICLES

### Never Lease to Tenants ... Only Rent

Creating the Ideal Rental Housing Agreement

tenant will be away longer than 48 hours.

- Shall not use car heaters or battery warmers, or run an electrical cable or extension cord from the property to any vehicle or for any other purpose.
- Knows about the property's smoking policy.
- Shall not drag furniture across the floors, halls, landings or stairs so as to cause marks. Floors shall be protected from heavy furnishings. Installed wall-to-wall carpeting won't damage the flooring. The tenant is responsible for returning the flooring to its original condition before vacating. The tenant should provide overlying carpets for frequent walking areas.
- Shall be responsible for ensuring all electric light bulbs and fuses are in place and operating properly.
- Shall use only those appliances supplied by the landlord. Written permission is required to use of any other appliances (excluding TVs, radios, a personal computer, etc.). The tenant pays for all repairs to appliances other than normal wear and tear.
- Will not install a waterbed, antennae or satellite dishes in or on the unit, including the balcony, or on the property.
- Is solely responsible for being locked out of their unit because of their carelessness. Charge



an administrative fee.

- And their children and guests are not permitted to loiter or play in the common areas in or around the property.
- Shall not throw objects or liquids out of windows, off balconies or other openings nor shall any object be hung from the outside of any window or balcony nor shall any rugs other objects be shaken out of such openings.
- Shall not remove drapery tracks where provided by the landlord.
- Agrees to obtain and maintain all vital services (heat, electricity), except water, hot water and use of a hot water tank, which shall be provided by the landlord (edit for your circumstance).
- Agrees to maintain a level of heat in the unit at all times to protect the property from damage.
- Will keep baseboard heaters (if applicable) free and clear of all obstacles. No combustibles will be stored near any heat source (duh!).
- Shall not use balconies for hanging clothes, cooking/barbecuing or as storage areas. Flower containers are hung only on the inside of the balcony. Carpeting is not allowed. Alterations to the balcony or railings are not permitted.
- Shall not obstruct or permit to be obstructed the common areas (eg. shoes, carriages,





## ARTICLES

### Never Lease to Tenants ... Only Rent

#### Creating the Ideal Rental Housing Agreement

toys, bicycles, etc.).

- Shall ensure all garbage is wrapped and tied, placed in the designated area for garbage, never left in common areas, and complies with the Municipal Recycling Program.
- Shall may use, at their risk and expense, clothes washers and drying machines. The landlord does not warranty the sufficiency or performance of the machines and is not responsible for any damage or loss of any kind by the tenant's use of such. The tenant will empty the machines immediately after the machine cycle has completed. The tenant will keep the laundry room tidy and store detergents etc. in a safe and secure area of their own unit.
- Is solely liable for loss or damage to articles stored in storage lockers. No potentially harmful or flammable substances shall be stored in lockers.
- Moving furnishings to or from the unit must be scheduled. All packaging must be properly disposed of by the tenant.
- Agrees that deliveries to the building are limited where such deliveries are not in the opinion of the landlord to be in the best interest of the building or its occupants.
- Agrees that the landlord, its agents and



employees may enter the rented Premises; then list the rules under the RTA, which are very specific and fairly-well defined.

- Agrees not to permit a garage sale or other similar activity to be held on the property or in the unit without written consent.
- Agrees to use the unit only as a residential dwelling and for no other purpose whatsoever (including, for example, babysitting/child care services, etc.). Illegal operations of any kind are not permitted (another duh!).
- Agrees to permit the landlord to perform repairs or renovations as it deems necessary or advisable, at its sole discretion.
- Shall provide their telephone number for the unit as soon as it becomes known and to notify the landlord in writing if it changes.
- Agrees that providing their email address to the landlord connotes 'opted-in' permission for the landlord to use it for communications purposes related to appropriate landlord-tenant business but in no way shall email correspondence be relied upon by either party as assurance that formal communiqué has been transacted or completed.
- Acknowledges, if applicable, that the landlord maintains a website (cite address) for the property for the tenant's benefit comprising information on the policies etc. regarding the property and amenities around it (etc.). The landlord is not liable for the contents of the website.
- If assessed as a Separate School supporter, the



## ARTICLES

### Never Lease to Tenants ... Only Rent

#### Creating the Ideal Rental Housing Agreement

tenant shall pay any increased taxes resulting there from.

- Agrees that, if, for any reason, the unit is not available to the tenant on the move-in date, the rent is not payable until the unit is available. The tenant is not entitled to compensation for any reason from such unavailability.
- Understands and consents that personal information will be collected about them by the landlord including updates from time to time, and that the landlord may report tenant information to consumer reporting services or collection agencies. The tenant acknowledges having been given the opportunity to ask questions about Privacy Policies and they have been answered to the tenant's satisfaction.
- And landlord shall comply with the termination provisions of applicable legislation (eg. RTA). The tenant must immediately pay any amount shown on a Notice of Termination served on them for non-payment of rent or for damages. If the tenant gives notice to vacate the unit and the landlord rents the unit to another tenant, and the tenant doesn't vacate when they are supposed to, then the tenant, in addition to all liability to the landlord for such "overholding", shall also indemnify the



landlord for all losses suffered by the landlord including legal fees, disbursements, rent arrears, etc.

- Must provide the landlord with 60 days' notice in writing no later than the first of the month.
- Agrees that, if the unit is vacant or appears abandoned and no rent has been received or the rent remains unpaid, then the tenant is deemed to have abandoned the unit, The landlord may enter the unit without notice, and by whatever means, and has the right to rent the unit as the agent of the tenant and to receive rent. The tenant will remain fully liable on this new rental agreement. Unit items may be sold or disposed of by the landlord to any person and at any price. Net proceeds of any sale, after deducting costs, will be applied to the rent. Provided the landlord has acted on reasonable grounds and in good faith, it shall not be liable for damages of any nature such entry, disposition or sale.
- Agrees that the landlord is not liable or responsible for (a) any negligence caused by their agents or employees for personal injury or death suffered or sustained by the tenant, their family, invitees or any other person who may be in the unit, (b) any loss, damage or injury to any of property or equipment whatsoever belonging to the tenant or any other person while such is in the unit, (c) any





## ARTICLES

### Never Lease to Tenants ... Only Rent Creating the Ideal Rental Housing Agreement

---

damage caused by water in any form which may flow from any part of the property, (d) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring; or (e) any damage caused by anything done or omitted to be done by any other tenants.

- Agrees that the tenant is solely responsible for all of their personal effects and should obtain Renter's Content Insurance to cover the repair or replacement of such personal effects when lost or damaged for any reason whatsoever.
- Agrees that no amendment or waiver of the agreement shall be effective unless it is in writing and attached to the agreement solely by the landlord, and that only the landlord, and not its agents or employees, are entitled to make such agreement changes.

You may think such a rental agreement is intimidating to a tenant but I have not yet had a tenant prospect agree to rent a unit only to decline after receiving the rental agreement. It's a lot to learn and know but rental housing is not a passive investment. It can be a full time job (for you or an employee/agent) and I've yet to meet a seasoned landlord that thinks otherwise.

Like any other business in today's litigious-prone society supported by tenant-biased judicial authorities, you must take the time, and undertake proper due diligence, to ensure that you protect yourself in the operation of your landlord duties or inevitably suffer the consequence.

**End**

*I am a commercial realtor (broker), based in Toronto, Canada.*

*As an owner/operator I am also intimately aware of the issues, challenges, personal financial and estate planning considerations, rewards, and sense of accomplishment that come from managing the human relationships, business challenges and operational issues of owning a rental property.*

*I can help you do the same.*

*Christopher Seepe*

**Cell:** 416.525.1558

**Email:** [cseepe@thebehargroup.com](mailto:cseepe@thebehargroup.com)

**Websites:** <http://www.thebehargroup.com>

[www.multiresidentialexpert.com](http://www.multiresidentialexpert.com)