

ADULTS LIVING WITH SENIORS: TENANTS OR NOT TENANTS?

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The Advocacy Centre for the Elderly occasionally receives calls from seniors who have friends or relatives living with them in their home. At times, problems may arise between the senior and the person living with the senior, whom we shall call the "occupant". This article will deal with remedies that a senior who owns and lives in their home may have when dealing with an unwanted occupant in their home.

Section 5 of the Residential Tenancies Act, 2006 (RTA) provides as follows:

This Act does not apply with respect to,

(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 building in which the living accommodation is located.

This means that where an occupant shares a bathroom or kitchen facility with the senior, the occupant does not have the protections that are provided to tenants under the RTA. Specifically, the occupant does not have "security of tenure" – meaning a right to stay in the home. Consequently, the senior owner does not have to go to a court or tribunal to get an order to force the occupants to move out of the premises.

If the occupant does not pay any rent, they may be considered to be a "bare licensee". This means that they have permission from the senior owner to be on the property, but this permission can be withdrawn on relatively short notice. If the occupant pays rent to the owner, then it is arguable that the occupant has a contract with the owner. For example, if the occupant paid a certain amount of money for

rent for October, it is arguable that there is a contract that the occupant could stay until the end of October. This contract could be terminated if there is a change in circumstances amounting to a breach of contract by the occupant, such as the occupant committing an illegal act on the premises or engaging in other objectionable behaviour.

Seniors who are property owners sometimes act on their own to tell occupants that they will have to find another place to live by a certain date. Notice may also be provided, orally or in writing that the occupant will be trespassing if the occupant remains on the premises after that date. If the occupant does not move out, the senior/owner can contact the local police and ask them to lay trespass to property charges against the occupant. Senior property owners can also change the locks to the premises. However, the occupant's personal belongings are the occupant's and should not be thrown out.

The senior/owner may wish to retain a lawyer to write to the occupant to advise the occupant that they must leave by a certain date. It is not uncommon for the lawyer to recommend that a copy of any letters be sent to the local police, together with an explanatory covering letter, in case the assistance of the local police is required. The police may have a role to play in these situations, in that they may be called upon to "keep the peace." Because there is always a danger that these close living situations may erupt in violence, a preventative visit from a police officer may have a great effect in preventing future harm. If the occupant engages in unacceptable conduct at any time, such as making threats, yelling, shouting or breaching the peace, the police can be called to remove the occupant immediately.

Where problems have arisen between owners and occupants, each party should consider obtaining legal advice.