

COMPLAINTS IN RETIREMENT HOMES

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Conflicts may arise in any type of housing. Retirement homes are a type of housing which is subject to **both** the *Residential Tenancies Act (RTA)* and the *Retirement Homes Act (RHA)*. Retirement homes are typically occupied by persons 65 years of age who receive care services but they are still tenancies. This article is a brief explanation of common issues that may arise and how to address, and hopefully resolve, these complaints. Please note that this is only a general summary, not legal advice.

Residential Tenancies Act Problems

Retirement homes are referred to as “care homes” under the *RTA*. The term “retirement home” is not found in this statute.

Common landlord and tenant problems which can arise in a retirement home include the following:

- **Rent** – Landlords may increase rent once a year by giving 90 days notice.¹ The government sets out the maximum amount landlords may increase rent annually (although these rent control guidelines do not apply to new rental units occupied after November 1, 1991).² Issues arise if proper notice is not given or if unlawful fees are charged.
- **Tenancy agreements** – Landlords are required to give tenants of care homes a written tenancy agreement. However, even where there is a written agreement, problems may still arise if that agreement includes terms that are not permitted.³
- **Care home information packages (CHIP)** – Each tenant must be given a CHIP but this does not always occur.⁴ Problems arise if the landlord has not provided a CHIP, the CHIP is incomplete or the landlord is not providing or not making available what is listed in the CHIP.
- **Increases in care services rates** – The rates charged for care services can be increased with 90 days notice.⁵ Issues arise if notice is not given in the proper form or at the appropriate time. Landlords cannot charge one

¹ *Residential Tenancies Act, 2006*, SO 2006, c 17, s 116 (*RTA*).

² *RTA*, s 6(2).

³ *RTA*, s 137.

⁴ *RTA*, s 140; O Reg 516/06, s 47.

⁵ *RTA*, s 150.

tenant a higher rate for care services than other tenants and any increase to a rate must be the same for all tenants.

- **Eviction** – Landlords cannot evict a tenant due to a change in their health or block their return after a hospitalization. If a landlord wishes to evict someone on the basis of increased care needs, they must prove that specific conditions have been met and obtain an eviction order from the Landlord and Tenant Board.⁶

Resolving *Residential Tenancies Act* Complaints

Tenants can get advice from a lawyer or community legal worker with expertise in landlord and tenant law. These individuals may advocate with landlords or assist with applications to the Landlord and Tenant Board, Small Claims Court or the Human Rights Tribunal of Ontario (whichever is appropriate) to get an order to address the problem.

The website for the Landlord and Tenant Board is <http://www.ltb.gov.on.ca>. The Board can be reached by phone at (416) 645-8080 or 1-888-332-3234.

Retirement Home Act Problems

The *RHA* created a regulatory body – the Retirement Homes Regulatory Authority – that has the power to license homes, conduct inspections and investigations, and enforce the legislation, in addition to developing mandatory care and safety standards.

Under the *RHA*, tenants of retirement homes are referred to as “residents” and the landlord is called a “licensee”. However, for the purposes of this article, the terms “tenant” and “landlord” will continue to be used to avoid confusion.

Retirement home problems may include:

- **Breach of the Residents’ Bill of Rights** – The Residents’ Bill of Rights is found in the *RHA* and sets out ten specific rights (e.g., protecting the privacy and lifestyle choices of tenants).⁷ Unfortunately, ACE often hears that these rights are being violated.
- **Written agreements and information packages** – Landlords are required to provide a written agreement and information package, in addition to the written tenancy agreement and CHIP required by the *RTA*.⁸ Issues arise if

⁶ *RTA*, s 148.

⁷ *Retirement Homes Act, 2010*, SO 2010, c 11, s 51 (*RHA*).

⁸ *RHA*, s 53.

the landlord has not provided this agreement or the information is incomplete.

- **Care and safety standards** – Problems occur if landlords do not comply with a variety of care and safety standards (e.g., fire, safety, public health requirements) as set out in the legislation.⁹
- **Plan of care** – Landlords are required to ensure that a tenant's care needs are assessed and that a plan of care is developed based on that assessment.¹⁰ Issues may arise if the tenant does not have a plan of care, if it was developed without their involvement or if the tenant disagrees with the plan of care.

Resolving Retirement Homes Act Complaints

Complaining within the Retirement Home

At the start of a tenant's residency in a retirement home, the tenant or their substitute decision-maker must receive a copy of the home's complaints procedure.¹¹ The procedure should identify a specific process to follow and may contain a list of specific staff members to whom complaints are to be made and in which circumstances.

Any complaint made to the home about the care of the tenant or the operation of the home – whether verbal or written – must be investigated and resolved (where possible) within ten business days of receipt of the complaint.¹² This includes providing a response to the person who made the complaint.

If the complaint cannot be investigated and resolved within this ten-day timeframe, the landlord must acknowledge receipt of the complaint within ten business days and provide a date by which a resolution can reasonably be expected. A follow-up response should be provided as soon as is reasonably possible.¹³

The person who made the complaint must receive a response which sets out the following:

- The steps the landlord has taken to resolve the complaint; or

⁹ RHA, ss 60-75.

¹⁰ RHA, s 62.

¹¹ RHA, s 73.

¹² O Reg 166/11, s 59(1)2.

¹³ O Reg 166/11, s 59(1)3.

- That the landlord believes the complaint is unfounded and the reasons for that belief.¹⁴

The landlord is required to keep a record of specific information regarding complaints, including:

- The nature of each verbal or written complaint;
- The date the complaint was received;
- The type of action taken to resolve the complaint (including the date of the action, time frames for action to be taken and any follow-up action required);
- The final resolution, if any;
- Every date on which any response was provided to the complainant and a description of the response; and
- Any additional response made by complainants after receiving the landlord's response.¹⁵

The landlord must also review and analyze the records for trends on at least a quarterly basis. These results must be considered to determine what improvements are required at the home. The landlord is required to keep a written record of each review and the improvements made in response. Where a verbal complaint is resolved within 24 hours of receipt, it does not have to be included in the written record or in the subsequent review.¹⁶

Mandatory Complaint Reporting

Friends and family members of tenants may be concerned about the treatment of the tenant they know or of other tenants in the home. One should be aware that the *RHA* mandates immediate reporting to the Registrar (a senior official at the Retirement Homes Regulatory Authority) by **any person** (except a resident) where there are reasonable grounds to suspect any of the following which result in either harm or a risk of harm to a resident:

- Improper or incompetent treatment or care;
- Abuse of a tenant by anyone;
- Neglect of a tenant by a landlord or retirement home staff;
- Unlawful conduct; and

¹⁴ O Reg 166/11, s 59(1)4.

¹⁵ O Reg 166/11, s 59(2).

¹⁶ O Reg 166/11, s 59(3).

- Misuse or misappropriation of a tenant's money (whether there is harm or a risk of harm).¹⁷

A mandatory report is made by calling the Retirement Homes Regulatory Authority at 1-855-ASK-RHRA (1-855-275-7472). An inspection of the retirement home by the Retirement Homes Regulatory Authority is triggered by this type of report.¹⁸

Allegations of Abuse or Neglect

In addition to reporting to the Retirement Homes Regulatory Authority, the landlord is required to start an investigation **immediately** for every alleged, suspected or witnessed incident of the following:

- Abuse of a tenant by anyone; or
- Neglect of a tenant by the landlord or a staff member.¹⁹

The landlord is also required to do the following:

- Immediately notify the resident's substitute decision-maker, if any, of the incident where it has resulted in physical injury, pain or distress to the resident;
- Notify the resident's substitute decision-maker, if any, within 12 hours of any other incident of abuse or neglect;
- Notify the resident and/or their substitute decision-maker, if any, immediately upon its completion of the results of the investigation;
- Immediately notify the police of any alleged, suspected or witnessed incidence of abuse or neglect that may be a criminal offence; and
- Analyze and implement changes and improvements following such investigations in accordance with the regulations.²⁰

Complaints to the Retirement Homes Regulatory Authority

Complaints about alleged contraventions of the *RHA* may also be lodged with the Registrar of the Retirement Homes Regulatory Authority. In certain circumstances, the Registrar's response may be reviewed by a Complaints Review Officer (a person appointed by the Board of Directors of the Authority). A decision of the Complaints Review Officer is final and not subject to appeal.²¹

¹⁷ *RHA*, s 75.

¹⁸ *RHA*, s 75(5).

¹⁹ *RHA*, s 74(a).

²⁰ O Reg 166/11, s 15(3).

²¹ *RHA*, s 88.

Therefore, tenants cannot have their complaints assessed by anyone outside of the Authority.

While these provisions do not come into force until January 1, 2014, it is still advisable to make complaints to the Authority because the complaint may actually be an abuse or neglect matter or the complaint may be relevant to the continued licensing of the home.

Complaints to Residents' Council

The Residents' Council may also be a good place to discuss complaints. The *RHA* grants several powers to the Residents' Council, such as:

- Informing residents of their rights and obligations under the *RHA*;
- Attempting to resolve disputes between the landlord and tenants;
- Advising the licensee of any concerns or recommendations the Council has about the operation of the home;
- Providing advice and recommendations to the landlord regarding what the residents would like to see done to improve care or the quality of life in the home; and
- Reporting any concerns and recommendations to the Registrar.²²

Suggestions and complaints brought by the Residents' Council to the landlord about the operation of the home and improvements in care must be responded to in writing within ten days of receipt.²³

Fear of Reprisal

Often, tenants and their families do not wish to make complaints, fearing reprisal from staff. The Residents' Bill of Rights includes the right of the tenant or someone on their behalf to raise concerns and make complaints without fear of coercion, discrimination or reprisal.²⁴

Further, the *RHA* contains whistle-blowing protections. This means that homes may not discourage reporting or threaten or subject residents to discriminatory treatment because a complaint was made.²⁵ If this occurs, a report should be made immediately to the Registrar at the Retirement Homes Regulatory Authority.

²² *RHA*, s 56(3).

²³ *RHA*, s 56(4).

²⁴ *RHA*, s 51(1)10.

²⁵ *RHA*, s 115.

The decision to make a complaint is always a personal choice for the tenant. Where a non-tenant believes there may have been harm to the tenant, the legislation contains a duty to report, as discussed above. However, when there is no such legal duty, it will be up to the individual to decide whether the act of making the complaint is worth the risk of perceived reprisals.

Complaints to Third Parties

Just because a person is a tenant of a retirement home does not mean that they have lost other basic civic rights. There are many other avenues of complaint available to tenants and families, such as:

- **Police:** If there is a suspected crime (such as assault or theft), the local police department should be contacted.
- **Professional Colleges:** If the complaint is about the action of a specific person who is a member of a professional college (e.g., doctor, nurse or social worker), a complaint about that person can be brought to the College itself for investigation.
- **Information and Privacy Commissioner of Ontario:** Where the issue deals with privacy or access to health information, the Office of the Information and Privacy Commissioner of Ontario can be contacted for assistance. Common examples of privacy problems are where the tenant's privacy was breached (e.g., the home gave personal information to a third party without consent), or the home refused to allow the tenant or their substitute decision-maker access to the tenant's records.
- **Human Rights Tribunal of Ontario:** The *Human Rights Code* prohibits discrimination on several grounds, including age, disability, ethnic origin, race sexual orientation and religion. If there is discrimination or harassment, a tenant can apply to the Human Rights Tribunal of Ontario. The **Human Rights Legal Support Centre** provides legal advice and representation before this Tribunal.

Conclusion

Although the *RTA* and *RHA* do not contain as many complaints mechanisms in favour of tenants as ACE feels necessary, some legal avenues are available to tenants. We encourage tenants and their representatives to bring issues and complaints to the attention of staff at the retirement home, the Retirement Homes Regulatory Authority and/or other parties, as appropriate. This should be done as soon as possible after the issue arises. If one does not try to resolve the problem, it may never be fixed.