

WHAT TO DO IF YOUR RETIREMENT HOME STAFF CLAIM YOUR CARE NEEDS ARE TOO HIGH

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Older adults may choose to move into a congregate-living setting such as a retirement home for any number of reasons. No matter the rationale, a retirement *home* is just that: a person's home. People living in retirement homes are tenants and, as such, are entitled to all the rights and protections due to tenants.

These rights include the fact that tenants cannot be forced by their landlords to leave their homes without due process. ACE often receives calls from tenants who feel that they are being coerced to leave their home by the administrators of the retirement home because the administration feels that the tenant requires too high a level of service. In some circumstances, these callers are sent to hospital from their retirement home and the retirement home "refuses" to take them back.



In other circumstances, callers have encountered situations where care services that were previously provided to them by retirement home staff have been discontinued by the home in an effort to make them leave. Many tenants are uncertain as to how they might legally address these issues. This confusion may result from the complicated

legislative framework that governs their homes. Retirement homes are regulated by many pieces of legislation. The two main laws affecting tenants are the *Residential Tenancies Act (RTA)* and the *Retirement Homes Act (RHA)*. Subject to very narrow exceptions, retirement homes are tenancies and must comply with the provisions of both the *RTA*¹ and the *RHA*.

The *RTA* sets the rules regarding tenancy agreements, landlord responsibilities, security of tenure, and termination processes. Care homes, which are a special type of tenancy, are governed by the general tenancy sections *and* the care home sections of the *RTA*.²

The *RHA* establishes a regulatory structure to license and set standards for retirement homes. It regulates issues such as care services and abuse prevention. The homes are regulated by the Retirement Homes Regulatory Authority (RHRA). The RHRA is required to maintain a public register of retirement homes, investigate allegations of abuse, and take and investigate complaints about the quality of care in retirement homes.

The Ontario *Human Rights Code*, which applies to retirement homes, includes provisions to prohibit actions that discriminate against people in a number of areas, including disability. Under the *Code*, a retirement home has a duty to accommodate tenants with

¹ For further details about other reasons for eviction, landlords' obligations and tenants' rights in care home, see: <http://www.cleo.on.ca/en/publications/carehome>.

² Special requirements related to "care homes" can be found in Part IX of the *Residential Tenancies Act*, and O.Reg. 516/06, both of which can be found at www.ontario.ca/laws

disabilities so that they may remain in their home in the manner that most respects their dignity, provided that to do so does not create undue hardship for the home.³

If the retirement home operator feels that a person cannot be safely accommodated, or if, in the words of the *RTA*, “the tenant requires a level of care that the landlord is not able to provide,”⁴ they must apply to the Landlord and Tenant Board for an order to evict or “transfer” that tenant. The *RTA* sets out a strict application process to which the parties must adhere. The retirement home operator must provide the tenant with a copy of this application. At a hearing - which the tenant is entitled to participate in - the Board must be satisfied that there is alternate housing available for the tenant *and* that community-based services are not sufficient to supplement the care the landlord can provide in order to meet the tenant’s care needs.⁵ The retirement home operator must obtain an order: they cannot simply send a person to hospital or other location in order to terminate their tenancy.

Unfortunately, it is ACE’s experience that retirement homes rarely follow the *RTA*-mandated process. In some cases, as noted above, retirement home staff may unilaterally reduce care services provided to a tenant. The result is that the tenant may not be able to live in the retirement home without these services and may be unable to obtain those services externally without incurring significant cost.

While a retirement home can reduce the care services available in the home to all residents,⁶ reduction in service cannot be selectively applied to one resident.⁷ In order to reduce a care service to all residents, the retirement home is required to provide 90 days’ notice to

tenants before the reduction in care services takes effect⁸ and to facilitate access to outside services.⁹ If a tenant wishes to move as a result of the reduction in services, the retirement home is expected to take “reasonable steps to find appropriate alternate accommodation for the resident.”¹⁰

Should the landlord reduce the care services of residents on an individual basis, there is a remedy: the tenant can apply to the Landlord and Tenant Board for an order determining:

(1) that the retirement home has withheld the reasonable supply of a care service that the retirement home is obligated to supply under the tenancy agreement: or (2) that the retirement home deliberately interfered with the reasonable supply of any care service.¹¹ The Board has broad powers to make orders to address this breach of the *RTA*, including ordering the landlord to provide monetary compensation and/or to stop the inappropriate conduct.¹²

Conclusion

While landlords may feel that it is not appropriate for some tenants to continue to reside in their retirement homes because their care needs are too high, they cannot resolve this by sending the tenant to hospital or by reducing their services in order to terminate the tenancy. Those living in retirement homes are tenants and entitled to have their rights as tenants respected.

If you are being referred to a retirement home, you can check whether the home is licensed by the RHRA or subject to RHRA orders by going to:
<http://www.rhra.ca/en/register/>

⁸ O. Reg. 166/11, s. 6

⁹ *RHA, supra*, note 6, s. 44(1)(c)

¹⁰ *Ibid.*, s. 44(1)(d)

¹¹ *RTA, supra*, note 4, s. 29(1)(2). Materials for the application can be found at: “Tenant Forms”, *Landlord and Tenant Board: Social Justice Tribunals Ontario*, online: <http://www.sjto.gov.on.ca/lrb/forms/#tenant-forms>

¹² *Ibid.*, s. 31(1)

³ *Human Rights Code*, R.S.O. 1990, c. H.19, s. 11(2)

⁴ *RTA*, S.O. 2006, c. 17, s. 148 (1)(b)

⁵ *Ibid.* s. 148(2)

⁶ *RHA*, S.O. 2010, c. 11, s. 44(1)

⁷ *RTA, supra*, note 4, s. 21(1)