

**Bill 132: Sexual Violence and Harassment  
Action Plan Act, 2016**  
Amendments to the *Residential Tenancies Act*

Presented by: Kaitlyn Ledingham  
Dasha Peregoudova  
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**Outline**

1. Background
2. Amendments to the Residential Tenancies Act ("RTA")
3. RTA amendments broken down
  - i. Shortened Termination notice
  - ii. Confidentiality
  - iii. Penalties for Misuse
4. Remedies used by LTB prior to Bill 132
5. Implications and take aways
6. Relevance to in-house counsel
7. Discussion and questions



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**Background**

- March 6, 2015, Government of Ontario announced: "It's Never Okay": An Action Plan to Stop Sexual Violence and Harassment"
- October 27, 2015, Government of Ontario introduces the Sexual Violence and Harassment Action Plan Act (Bill 132)
- Received Royal Assent March 8, 2016
- Became effective September 8, 2016
  - No related decisions since September 8<sup>th</sup>



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## Bill 132: Sexual Violence and Harassment Action Plan Act

Amendments to the Residential Tenancies Act

- 1. Shortened Termination Notice:** Tenants (including joint tenants) who are survivors of sexual or domestic violence will be allowed to give a shortened termination notice of 28 days
- 2. Confidentiality:** Landlord's are required to keep the notice and legal documentation confidential in order to protect the tenant until after they have vacated the rental unit
- 3. Penalties for misuse:** Protects landlords against tenants misusing this privilege; protects tenants against landlords not honouring the confidentiality requirements



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## Shortened Termination Notice

*Residential Tenancies Act, s. 47.1 and 47.2(1)*

- Previously, s. 44(2)-(4) applied to all tenants, and requires that Tenants give 60 days' notice before termination of monthly, yearly or fixed term tenancies
- S. 47.1 - if the tenant, or child of the tenant, is deemed to have experienced violence or another form of abuse, the tenant may terminate a monthly, yearly or fixed-term tenancy by giving 28 days notice before the specified termination date
- S. 47.2 (1) - same rule for joint tenants



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## Shortened Termination Notice: Joint Tenancies

*Residential Tenancies Act, s. 47.2 (6)*

- A joint tenant who gave notice and vacates the rental unit on or before the termination date ceases to be a tenant and a party to the tenancy agreement on the termination date



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### Shortened Termination Notice: Joint Tenancies

*Residential Tenancies Act, s. 47.2 (9)*

- The other tenant(s) who did not give notice or any tenant that did not vacate the unit may terminate the tenancy before the end of the term by giving 60 days notice.
- If there are multiple joint tenants that did not vacate upon notice, the 60-day notice must be given jointly by all of them



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### Shortened Termination Notice

*Residential Tenancies Act*

When is a tenant, or child of a tenant, deemed to have experienced violence and/or abuse?



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### Shortened Termination Notice

*Residential Tenancies Act, s. 47.3(1)*

Under s. 47.3(1), a tenant must provide either:

- a) A restraining order relating to the tenant or the tenant's child has been made against specified persons under the Criminal Code, the Family Law Act, or the Children's Law Reform Act (such as a spouse or former spouse, person in a dating relationship, relative living in rental unit, among others), **OR**
- b) A statement that complies with the specified requirements in subsection (5) if the tenant alleges that sexual violence or another act or omission has been committed against the tenant or the tenant's child



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## Shortened Termination Notice

"deemed to have experienced violence"

### S. 47.3 (2):

"Sexual Violence" means:

any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation



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## Shortened Termination Notice

"deemed to have experienced violence"

### "Act or omission"

Includes the following acts when committed by a **spouse/former spouse/relative** living in rental unit:

- Intentional and reckless acts or omissions that cause bodily harm to the tenant or child
- Acts that cause the tenant or child to fear for their safety
- Forced confinement of tenant or child, without lawful authority



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## Shortened Termination Notice

"deemed to have experienced violence"

### "Act or omission"

Includes the following acts, and **without reference to the person who commits them**:

- Act or omission causing emotional or financial harm, or fear of such harm, even if it does not cause bodily harm or cause fear for his or her own safety
- Threat or attempt to commit the act



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## Shortened Termination Notice

Residential Tenancies Act

What are the specific requirements for the form/content of the tenant's statement of notice?



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## Shortened Termination Notice

Form/Content of Statement of Notice

Under s. 47.3 (5), the statement **shall**:

- Be in a form approved by the Board
- Identify the rental units to which it relates
- Include the allegation
- Include an assertion that as a result of the act committed against them, they may be at risk of harm or injury if they were to continue living in the rental unit
- Sign the statement
- The notice should also state the date on which the tenancy is to terminate



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## Shortened Termination Notice

Form/Content of Statement of Notice

Under 47.3 (5), the statement **need not**:

- Describe the circumstances of the sexual assault or act or omission
- Identify the person alleged to have committed the act
- Identify whether the occurrence is one of sexual assault or other act or omission
- Specify whether the act was committed against the tenant or a child living with the tenant



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## Shortened Termination Notice

*Residential Tenancies Act*

Note:

- The landlord to whom a notice is given may not enter the unit without written notice to show the unit to prospective tenants, until after the tenant(s) have vacated the unit in accordance with the notice **(s. 47.1 (5))**
- If a tenant does not vacate the rental unit on or before the termination date set out in the notice, the notice becomes void **(s. 47.2 (5))**



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## Shortened Termination Notice

*Residential Tenancies Act*

Note:

- In determining whether the tenant is deemed to have experienced violence/abuse, the Board may inquire in to whether the documentation in the notice is genuine, but not in to the truth of, or belief in the truth of any allegation or assertion made by the tenant **(s. 47.3 (6))**



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## Confidentiality

*Residential Tenancies Act, s. 47.4(1)*

**S. 47.4 (1):**

A landlord to whom a notice is given must keep confidential and not disclose to anyone, including a joint tenant, child welfare, immigration or police services:

- The fact the notice has been given
- The notice or accompanying documentation
- Any information included in the notice or documentation



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## Confidentiality: Exceptions

*Residential Tenancies Act, s. 47.4(2)*

**S. 47.4 (2)** allows a landlord to disclose information to:

- An employee or investigator in the Ministry in connection with the investigation or prosecution of an offense under the Act
- Law enforcement agency (upon request)
- Landlord's lawyer
- The Board, for purposes of determining whether the notice was properly given
- Property manager or superintendent, if person needs the information for purposes of performing the duties on behalf of the landlord with respect to the unit



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## Confidentiality: Advertising

*Residential Tenancies Act*

Note:

A landlord may advertise the unit for rent:

- During the notice period and before the tenant has vacated, as long as the rental unit is not identified in the advertisement
- After the tenant has vacated in accordance with the notice
- After the termination date passes and the tenant has not vacated



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## Confidentiality: Advertising

*Residential Tenancies Act*

Note:

After the termination date specified in the notice, and after the tenant vacates in accordance with the notice, the landlord may disclose to the remaining tenant:

- The fact the notice was given
- The termination date specified in the notice
- (see **s. 47.4 (3)**)



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## Penalties for Misuse

*Residential Tenancies Act, ss. 233 and 234*

**Ss. 233 and 234** are amended to add the following offenses:

1. Knowingly providing false or misleading information in connection with the giving of a notice
  - If a landlord suspects that a tenant is misusing the special provision, the landlord can file complaint with the Ministry of Municipal Affairs and Housing Investigation and Enforcement Unit
2. Contravening the confidentiality rules
  - A tenant can report a landlord to the Ministry or file application with the Landlord and Tenant Board if the landlord breaches the confidentiality provisions



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## Contrast: Remedies Before Bill 132

*Cases Involving Sexual Violence or Sexual Harassment*

*SOL-45700-14 (Re)*, 2014 CanLII 28555 (ON LTB)

- Application for termination and eviction by landlord for non-payment
- Evidence of sexual harassment of tenant by landlord
- Having found breach of landlord's responsibilities, could not terminate tenancy as per s. 83(3) of the RTA
- Found violation of Ss. 7.1 and 9 Human Rights Code
- Landlord's application for termination and eviction dismissed
- \$1000 rent abatement to tenant



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## Contrast: Remedies Before Bill 132

*Cases Involving Sexual Violence or Sexual Harassment*

*CET-05229-10 (Re)*, 2011 CanLII 42441 (ON LTB)

- Tenant's unfounded allegations of harassment were found to be vexatious
- Board dismissed the application

*EAT-48885-15 (Re)*, 2015 CanLII 59962 (ON LTB)

- Landlord's use of "XO" in text messages did not amount to harassment



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### Contrast: Remedies Before Bill 132

Cases Involving Sexual Violence or Sexual Harassment

*TSL-71108-16-IN (Re)*, 2016 CanLII 39808 (ON LTB)

- Spouses living as joint tenants; one spouse becomes violent, threatens spouse and children, chases them with hockey stick, commits illegal acts in building, causes damage
- Because of joint tenancy, Board initially thinks it can't grant landlord s. 83 relief for eviction to one party and not the other
- Ultimately concludes that there is some discretion and awards s. 83 and s. 204(1) remedy to landlord against violent spouse



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### Contrast: Remedies Before Bill 132

Cases Involving Sexual Violence or Sexual Harassment

*SOT-19870-11 (Re)*, 2011 CanLII 91098 (ON LTB)

- Superintendent sexually harassed tenants, one of whom was pregnant, entered their unit illegally, sent threatening text messages, and failed to disclose that house used to be a grow-op
- Tenants moved out after 2 quick months
- Total \$5,945.00 expenses and abatement awarded to tenants



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### Contrast: Remedies Before Bill 132

Cases Involving Sexual Violence or Sexual Harassment

*EAT-01396-09 (Re)*, 2009 CanLII 78945 (ON LTB)

- Finding of harassment by superintendent
- No punitive damages for pain and suffering
- \$900 awarded to tenant from landlord for landlord's failure to interfere and remedy
- Termination of tenancy also awarded



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## Implications and Takeaways

- Tenant's right to terminate early upon written notice
- Landlord's obligation of confidentiality, and the accompanying offence
- Landlord's advertising requirements
- Landlord may file complaint with Ministry if suspects false info in notice
- Tenant may file complaint for breach of confidentiality



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Questions?



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## Contact Us

**Kaitlyn Ledingham**

416.865.6652

[klendingham@grllp.com](mailto:klendingham@grllp.com)

[grllp.com](http://grllp.com)

@grllp

**Dasha Peregoudova**

416.865.6677

[dperegoudova@grllp.com](mailto:dperegoudova@grllp.com)

[grllp.com](http://grllp.com)

@grllp



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