

RETIREMENT HOME LICENSING FEES – CAN RETIREMENT HOME LANDLORDS PASS THROUGH THE HOME’S LICENSING FEES TO TENANTS?

By: Judith Wahl, Executive Director

Since the beginning of July, 2012, ACE has received many calls from retirement home tenants, asking whether the retirement home landlord can make them pay an additional rent or service charge to cover the cost of the licensing fees that retirement home operators are now required to pay to the Retirement Homes Regulatory Authority (RHRA). Homes in Ontario that meet the definition of “retirement home” under the *Retirement Homes Act*¹ (RHA) are required as of July 1, 2012, to have applied for a licence. According to the RHRA’s *Applicant Guide: Retirement Home Licence Application*, retirement home landlords will be charged an application fee as well as an annual licence fee.²

ACE lawyers are of the opinion that in most cases, retirement home landlords cannot simply add on these licensing fees to a tenant’s monthly bills as either an increase in rent or as an additional care service charge. Retirement home landlords have been passing on these charges to tenants in a manner that, in our opinion, breaches the *Residential Tenancies Act* (RTA).³ Retirement home tenants should be aware that if they wish to challenge these charges they must file an application at the Landlord and Tenant Board for a refund under section 135(1) of the *RTA*⁴ within one year.

Specifically, sections 135(1) and (4) state:

135.(1) A tenant or former tenant of a rental unit may apply to the Board for an order that the landlord, superintendent or agent of the landlord pay to the tenant any money the person collected or retained in contravention of this Act or the *Tenant Protection Act*, 1997.

(4) No order shall be made under this section with respect to an application filed more than one year after the person collected or retained money in contravention of this Act or the *Tenant Protection Act*, 1997.

This article will explain what these licensing charges are, and what retirement home tenants can do if they receive such a charge on their monthly rent and services bills.

Legislation that Applies to Retirement Homes

Retirement Homes are governed by two pieces of legislation - the *Retirement Homes Act* and the *Residential Tenancies Act*.

The *Retirement Homes Act* (RHA) establishes a regulatory system and structure, requires that retirement homes be licensed, and sets standards that the retirement home landlords must comply with on a variety of matters including: care services; abuse prevention and response; and operations. The RHA also requires the RHRA to maintain a public register that contains information about retirement home landlords.

¹ SO 2010, c 11.

² Retirement Home Regulatory Authority, *Applicant Guide: Retirement Home Licence Application*, online: <<http://www.rhra.ca/assets/en/pdf/RHRA-Applicant-Guide-Apr2012.pdf>>.

³ SO 2006, c 17.

⁴ *Ibid*, s 135.

The term “retirement home” is defined in the *RHA* as:

a residential complex or the part of a residential complex,

- (a) that is occupied primarily by persons who are 65 years of age or older,
- (b) that is occupied or intended to be occupied by at least the prescribed number of persons who are not related to the operator of the home, and
- (c) where the operator of the home makes at least two care services available, directly or indirectly to the residents,⁵

Care services include but are not limited to: health services, nursing services, continence care, assistance with dressing, bathing and feeding, and provision of meals.

Retirement homes are also, however, residential tenancies and therefore must also comply with the provisions of *Residential Tenancies Act (RTA)*. Within the *RTA*, retirement homes would fall under the category of housing referred to as “care homes”. The *RTA* sets out the rights and obligations of both tenants and retirement home operators/licensees who are also landlords. The *RTA* sets out that the landlord must provide tenants with a written tenancy agreement; a care home information package (CHIP) that details the various services available from the landlord at that home, costs of those services, staffing at the home; and other types of consumer information.

The fact that the landlord of a retirement home cannot pass through the licensing fees payable under the *RHA* to tenants is because the retirement home is also subject to the *RTA* which prohibits landlords from charging “illegal fees” to tenants. We will discuss this in greater detail below.

Retirement Home Licensing

As mentioned previously in this article, all retirement homes operating in Ontario are required to be licensed as of July 1, 2012. Under the *RHA*, homes that applied for their licence before July 1, 2012 were deemed to have a licence until the RHRA determines that a licensee has met all the requirements and either issues a licence, or refuses to issue a licence because the requirements have not been met. Since July 1, 2012, the RHRA has been assessing the applications that it has received to determine whether to issue licences to each deemed licence holder. It will take many months before this process is completed by the RHRA.

After July 1, 2012, any new retirement home operators/landlords seeking to start a new retirement home business will not be able to open for business until they are granted a licence. Applications received by the RHRA subsequent to July 1, 2012, will no longer result in “deemed” licences.

If a home was operating prior to July 1, 2012, and has not applied for a licence, it would be considered to be operating without a licence and would be in breach of the legislation. Should you find yourself in this situation, please contact the RHRA for further information.

The RHRA charges retirement home landlords two different fees. These are a **licence application fee** and an **annual licence fee**. For more information, consult the *Fact Sheet: Fees*, that is available from the RHRA on its website.⁶

⁵ *Supra*, note 1, s 2(1).

The licence application fee is \$800 for homes with twenty or fewer living quarters/suites, and \$1200 for all other homes. This fee is not subject to HST.

The second fee is an annual licence fee which is assessed based upon the total number of living quarters/suites in the home. The current fee is \$9 per suite, per month, plus 13% HST (\$10.17 total).

Residential Tenancies Act – Rent and Care Services Charges

Under the *RTA*, landlords of care homes can enter into tenancy agreements that set out the fees to be paid for accommodation and the charge for care services. The tenancy agreement must list separately what the rent amount is and what the cost is for the care services portion.

In Ontario, for those homes to which rent control applies, rent can only be increased by the landlord once a year in accordance with the Provincial Rent Increase Guideline set out by the government. The Rent Increase Guideline was 3.1% for 2012. The provincial government announces the annual guideline increase around the end of August. A landlord is also required to give a tenant 90 days written notice, on forms from the Landlord and Tenant Board, of an increase in rent.

Care services charges can be increased only after the landlord gives a tenant 90 days written notice. Care services charges can be increased more than once a year, as long as the required notice is given before the increase comes into effect. There is a specific definition in the legislation and regulations as to what care services are. These include such things as health care services, nursing services and services that provide assistance with the activities of daily living.

Licensing fees – are these Rent or Care Services?

Licensing fees that a retirement home landlord is required to pay to the RHRA are not care services and cannot be charged to tenants as care services. The *RTA* and its regulations specifically define what constitutes a care service and licensing fees are not listed. It is for this reason that ACE takes the position that retirement home landlords cannot pass on these RHRA fees to tenants in the form of an increase in the charge for care services that a tenant has contracted to receive. ACE is also of the opinion that the licensing fees that retirement home landlords are now required to pay to the RHRA are not “rent” as defined in the *RTA*.

According to section 123(1) of the *RTA*, a landlord may increase the rent charged to a tenant for a rental unit as prescribed at any time if the landlord and the tenant agree that the landlord will add any of the following with respect to the tenant’s occupancy of the rental unit:

1. A parking space
2. A prescribed service, facility, privilege, accommodation or thing.⁷

⁶ Retirement Homes Regulatory Authority, *Fact Sheet: Fees*, online: <<http://www.rhra.ca/assets/en/pdf/Factsheet-Fees-May2012.pdf>>.

⁷ *Supra*, note 3, s 123.

Section 16 of the regulations to the *RTA*⁸ provides a list of prescribed services and facilities, which includes, but is not limited to: cable television; satellite television; air conditioner; extra electricity for an air conditioner or washer/dryer in the rental unit; heat; electricity. Licensing fees are not included in the list of prescribed services and facilities as something that can result in an agreement between a landlord and tenant to increase rent.

Section 134 of the *RTA* also prohibits a landlord, either directly or indirectly, from requiring a tenant to pay any additional charges to the landlord as part of rent.⁹ Listed in section 134 are things such as a fee, commission, bonus, penalty, key deposit that may or may not be refundable; any fee to be paid by a prospective tenant as a condition of granting tenancy or continuing occupancy; rent for any portion of the rental unit in excess of what the landlord may legally charge for that rental unit.

Therefore it is argued that retirement home landlords who add licensing fees to rent are imposing an illegal charge on the tenant. A retirement home tenant who finds him or herself in a situation where their landlord has collected money illegally from them can file a T1 Application for a Rent Rebate with the Landlord and Tenant Board on the basis that the landlord has charged an illegal rent or collected an illegal charge. This application must be made within one year after the charge was collected otherwise, the amounts may be deemed lawful.

ACE is of the opinion that fees owed by a retirement home landlord to the RHRA cannot be passed through to tenants by adding these fees as either a care service or as an additional rent charge as a line on the monthly billing of a tenant's account.

Seek Advice from Your own Legal Counsel

If you are a tenant in a retirement home and you have received notice from your landlord that your rent or care services have been increased to pay for the licensing fee that the retirement home landlord must now pay to the RHRA, you should consider seeking legal advice. ACE will be posting any updated information or further developments on this issue on our website at www.ancelaw.ca and also in future newsletters.

ACE encourages retirement home tenants to contact the Landlord and Tenant Board <<http://www.ltb.gov.on.ca/en/index.htm>>, their local community legal clinic, or ACE for further information.

For more information:

Ontario Landlord and Tenant Board

Website: <http://www.ltb.gov.on.ca/en/index.htm>

Telephone: **416-645-8080** from within the Toronto calling area, or toll-free at **1-888-332-3234** from outside Toronto

Retirement Homes Regulatory Authority

Website: <http://www.rhra.ca/en/>

⁸ O Reg 516/06, s 16.

⁹ *Supra*, note 3, s 134.

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