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How to create the best rental agreement

Christopher Seepe reveals his top tips for creating an ideal rental agreement that will maximize your income and minimize your liabilities



You'll never appreciate your rental agreement until the day a disgruntled tenant – or worse, a professional tenant – tries to extract maximum financial compensation from you.

Sometimes this happens with the help of the Landlord and Tenant Board (LTB), landlord-unfriendly municipalities, tenant advocacy groups, tenant boards, the vagaries of the judicial system, and all the political parties that pander to the large voter base of tenants.

Yes, I am overexaggerating for effect, but the dangers of being substantially hurt financially by “the system” are real and more common than you may know.

Lease vs rental agreement

I never use leases. A lease is a legally binding contract that grants a tenant the right to use your property for a specified period in consideration of rent or other compensation.

Investors and lenders love tenants-on-a-lease, believing they stabilize rental income. But landlords give up rights under the Residential Tenancies Act (RTA), with little real offset in value. With a lease, you cannot undertake no-fault notices of termination, such as renovation and demolition during the term of a lease, and you cannot serve a notice to evict a tenant (N8) for persistently late rent payments. You're unlikely to collect

rent owed from a tenant who moves out early. Generally, a party 'injured' by a breach of most types of agreements must make every effort to minimize their losses. This means you must try to find another tenant immediately. If you find a tenant, you can only demand the rent for the vacancy period.

You can't go to the LTB to collect the balance of rent owed. The LTB has no jurisdiction over leases. You must go to the Small Claims Court. To enforce a monetary judgment, the first thing you have to do is find out where the tenant lives and then serve notice on them. How much time will that take? Where do you begin? How much will it cost?

I only offer a month-to-month rental agreement. You can get good ones by joining certain landlord associations, hiring a real estate paralegal who likely has a boilerplate already, and/or hiring a property manager, although the quality, currency, and scope of protection in their agreements range widely.

My agreement is very robust, comprising three pages plus a three-page Schedule A that outlines the tenant's and landlord's responsibilities to each other. You may think such a rental agreement is intimidating to a tenant, but I have not yet had a tenant prospect agree to rent a unit, only to decline after receiving the rental agreement. I believe a well-drafted rental agreement is one of the best tools for discouraging professional and thoughtless tenants.

With a lease, you cannot undertake no-fault notices of termination

Constructing your ideal rental agreement

Here are some constructs for your rental agreement, but don't use it as is. You must have proper legal wording.

➡ Rent is to be paid one month in advance, on the first of each month. The tenant will be served with a Notice of Termination (N4) on the third of the month for non-payment of rent or for damages.

➡ If the tenant gives notice of vacating and the landlord rents to another tenant, then the tenant does not vacate, the tenant is liable for all costs of the “overholding” and also indemnifies the landlord for all losses (legal fees, rent arrears, etc.).

➡ Identify every person living in the unit. Only those named should live there. Allow for guests. Anyone else is a trespasser.

➡ Terminate 30 days after a tenant's death.

➡ Identify rent in detail. Here's a handy table:

Paid first month's rent	\$	Date of first month's rent paid		Not sufficient funds charge	\$40
Paid last month's rent	\$	Other amounts paid	\$	Key replaced	\$20
Electricity	Tenant pays	Description of other amounts		Administration fee (collect utilities, lock-outs, etc.)	\$60
Storage locker	\$5	Storage locker #			
Parking	\$20	Parking space 1 #		Licence plate 1	
Total rent	\$	Parking space 2 #		Licence plate 2	
Tenant's email address					

Heat	Hydro	Water	Fridge	Stove	Clothes washer	Clothes dryer	HWT	Parking	Phone	Internet	Cable
No	No	Yes	Yes	Yes	Not allowed	Not allowed	Yes	Extra	No	No	No

Dishwasher	Air conditioning	Garbage compactor	Storage locker	Heater	Humidifier	Other appliances
Not allowed	Written permission from landlord	Not allowed	Extra	Written permission from landlord	Written permission from landlord	Written permission from landlord



- ➔ Identify all amenities included and excluded.
- ➔ All tenants are, or any one tenant is, "jointly and severally" responsible.
- ➔ Get permission to do credit checks, then do them. Treat inaccurate information given as fraudulent.
- ➔ Non-payment, late payment, or an agreement breach may be reported to a credit agency.
- ➔ Note RTA rules about changing locks.
- ➔ Use a well-checked-out guarantor when your instincts say the tenant is good but the credit report does not.
- ➔ Someone else paying the tenant's rent does not create an agreement between you and them.
- ➔ Landlord is a preferred creditor if the tenant goes bankrupt.
- ➔ The tenant must notify you immediately if the smoke detector stops working.

Schedule A – rules and regulations

The tenant must:

- ✓ practice energy conservation
- ✓ look after the unit – clean and maintain floors, walls, fixtures, appliances, etc.
- ✓ be responsible for all consequences of their

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or their guests' wilful or negligent conduct, including admission of creatures or pests, weather elements; water left running; occupant misconduct, etc.

- ✓ not make any alterations, including attaching screws, stick-on hangers, wallpaper, etc.
- ✓ not do or cause anything to interfere with the rights of other tenants or the landlord ('right of private enjoyment') – eg noise,

noxious odours, smoking, fighting, abusive language, unusual hobbies, etc.

- ✓ allow periodic inspections; allow photos, especially of the smoke detector, which tenants must date and sign
- ✓ pay for damage to walls, or damage caused by unplugging plumbing; damage to windows left open during inappropriate weather or to doors and screens, or damage caused by burns to flooring, etc.
- ✓ park only their operational vehicle (no repairs/washing permitted) and be solely responsible for dealing with snow/ice or any other parking matter
- ✓ clean up spillage/leakage of all chemical substances
- ✓ respect "No Parking" and fire routes – tenant pays for towing
- ✓ not use car heaters/battery warmers, or run extension cords from the property to any vehicle or for any other purpose
- ✓ not drag furniture; overlying carpets must be used for areas frequently walked on
- ✓ supply all electric lightbulbs/fuses
- ✓ use only the appliances supplied; pay for repairs other than normal wear and tear
- ✓ not install a waterbed, antennae or satellite dishes
- ✓ pay administrative fees for lock-outs
- ✓ not allow children or guests to loiter/play in the common areas
- ✓ not throw objects/liquids out of windows or off balconies; no rug-shaking permitted
- ✓ maintain all vital services, except those provided by the landlord; keep heat at a level that protects the property from damage
- ✓ not store combustibles near a heat source
- ✓ not use balcony for hanging clothes, cooking/barbecuing, or storage; not do rail alterations or install carpeting. Flower containers to be hung inside only
- ✓ not obstruct common areas (eg with shoes, carriages, toys, bicycles, etc.)
- ✓ wrap all garbage and dispose of it appropriately; comply with municipal recycling
- ✓ be solely responsible for use/sufficiency/performance of clothes washers/dryers. Tenant must empty machines immediately as cycle is finished and keep room tidy. Detergents must be stored safely in tenant's unit
- ✓ be solely liable for loss/damage to articles in storage lockers. No harmful/flammable substances are allowed
- ✓ schedule moving and deliveries, and dispose of packaging properly

- ✓ allow landlord/employees to enter the premises (note RTA rules)
 - ✓ not have garage sales without approval
 - ✓ use unit only as a residential dwelling (no childcare services, etc., allowed). Illegal operations are not permitted
 - ✓ permit landlord to perform repairs or renovations as deemed necessary, at landlord's discretion
 - ✓ provide home telephone number and notify landlord of changes
 - ✓ pay any increased taxes resulting from being a 'separate school' supporter
 - ✓ provide 60 days' notice no later than on the first of the month
 - ✓ be solely responsible for all personal effects (and should obtain Renter's Content Insurance)
- The tenant also agrees that:
- ✓ Landlord may report tenant information to consumer reporting/collection agencies. Tenant's questions about privacy must have been answered to tenant's satisfaction.
 - ✓ No compensation is to be paid if unit is unavailable on move-in date for any reason.
 - ✓ If the unit is vacant or appears

abandoned and no rent has been received, the landlord may enter without notice and by whatever means, and has the right to rent the unit as the tenant's agent and to receive rent. The tenant remains liable. The landlord may sell or dispose of items to any person and at any price. Net proceeds of the sale will be applied to rent owed. The landlord must act on reasonable grounds, and in good faith, to not be liable for damages of any nature.

- ✓ Agreement amendments/waivers must be in writing. Only the landlord (not employees) can make changes.
- ✓ If the tenant fails to pay their utility bills, the landlord may pay, then collect from the tenant as rent, with administration fee.
- ✓ The landlord is not liable for
 - (a) negligence caused by agents/employees in the case of personal injury or death suffered by the tenant, their family, guests, invitees, etc.;
 - (b) loss/damage/injury to tenant's or invitee's property/equipment; (c) damage caused by electrical wiring, fire, or water flowing from any part of the property; or (e) damage caused

by anything done or omitted to be done by any other tenants.

- ✓ Providing a mail address connotes 'opted-in' permission related to appropriate landlord-tenant business communications but must not be relied upon by either party as assurance of any formal communiqué.
- ✓ Landlord is not liable for website contents.

It's a lot to know, but rental housing is absolutely not a passive investment. It can be a full-time job (for you or an employee/agent), and I have yet to meet a seasoned landlord who thinks otherwise. Like any other business in today's litigious-prone society supported by tenant-biased judicial authorities, you must take the time, and undertake due diligence, to ensure you protect yourself in the operation of your landlord duties, or you will inevitably suffer the consequences. ■

CHRIS SEEPE is a commercial real estate broker based in Toronto, Canada, who is dedicated to sharing his experience and knowledge of multiresidential (rental apartment) building investments. For more information or to contact him, visit www.multiresidentialexpert.com

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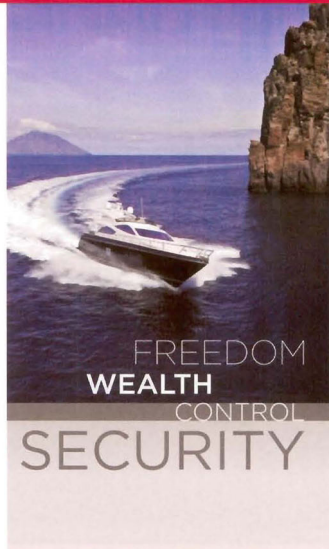
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