Overview

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Learning Outcomes

After reading this chapter, you will be able to:

- Recount the history of landlord–tenant law
- Identify the aspects governed by the *Residential Tenancies Act, 2006*
- Explain the types of applications that can arise in a landlord–tenant relationship
- Identify the applications that can be made about the amount of rent charged

Background: How Did We Get Where We Are?

law
a system of rules that regulates people's conduct

precedents
previous decisions that determine or give guidance for current decisions

statute
a particular set of legal rules on a subject enacted by Parliament or a provincial legislature

As is the case for all of the English-speaking provinces, most of the **law** of Ontario has its origins in the law of England. For a thousand years, English law has dealt with the situation where person A owns a property but rents it to person B. From the time of King Henry II, who reigned from 1154 to 1189, English law mostly developed through the cases that were decided by judges. Another way to express that is to say that English law is based largely on **precedents**, which are generally considered to be binding on judges deciding subsequent cases.

However, from time to time, the English Parliament brought together the rules on a subject and enacted a **statute**. Then, landlords and tenants could consult the statute to read what the main rules were. Judges still decided specific cases, and precedents still determined the law and future decisions.

Statutes could also change the law, especially if Parliament decided that the law should be different from what judges had said it was. Furthermore, statutes could be used to change the law in a systemic way, to update the law, or to change who would decide cases.

Ever since Canada has had its own Parliament and Ontario has had its own legislature, the law in Ontario has diverged from the law in England. That occurred both because Canada and Ontario passed statutes that did not apply in England and because the Parliament of England passed statutes that did not apply in Ontario. From 1707 to 1998, the only Parliament of England was the Parliament of the United Kingdom (of England and Scotland). In 1927, 1939, and 1949, that Parliament updated English landlord–tenant law, but those reforms did not apply in Ontario.

law reform commission
a group of legal experts who advise Parliament or a provincial legislature about potential law reforms

An innovation of the 1960s and 1970s was the idea of a permanent **law reform commission** (or "law commission" or "law revision commission"), which was given a mandate to review a whole area of law to recommend to the Parliament how the law should be reformed. Early in its mandate, the Ontario Law Reform Commission was tasked with recommending reforms to Ontario's landlord–tenant law to make it conform to the expectations of an increasingly urban society.

Largely following the recommendation of the Ontario Law Reform Commission, the Ontario legislature updated Ontario's residential landlord–tenant law in 1972 and 1974 in a major way. Those reforms were enacted as a new part IV of the *Landlord and Tenant Act*, which applied only to residential tenancies. (Parts I, II, and III of the Act applied to **commercial tenancies** and not to residential tenancies, and were not reformed to the same degree.)

commercial tenancies
tenancies of commercial property such as shops or businesses

rent control
rules that limit what rent increases landlords can charge tenants

Ontario also brought in **rent control** for most residential tenancies in 1975. Since then, Ontario has been subject to eight different statutes applying rent control. Until 2003, a change in the provincial governing party triggered a change in rent control law.

Until June 1998, Ontario landlord–tenant law was subject to a statute separate and apart from the rent control statute. The various statutes, along with the name of the decision-making body that decided rent control applications, are shown in Table 1.1.

Until 1984, Ontario landlord–tenant law cases were decided by County Court judges, who were appointed by the federal government. In 1984, the County Court was merged with the Supreme Court of Ontario (the highest Ontario trial court) and the Surrogate Court to become the Ontario Court (General Division). Between 1984 and June 1998, judges of the Ontario Court (General Division) heard landlord–tenant cases.

TABLE 1.1 Applicable Ontario Rent Control Statute(s)

Date Statute Took Effect	Name of the Statute	Name of the Decision-Making Body for Rent Control	Notes
1975	*Residential Premises Rent Review Act*	Rent Review Commission	Some sections were **retroactive**
December 1979	*Residential Tenancies Act*		Only the rent control parts of this statute were brought into force
January 1987	*Residential Rent Regulation Act*	Ministry of Housing and the Rent Review Hearings Board	Some sections were retroactive to July 1975
August 1990	*Residential Rent Regulation Act,* and the *Residential Rent Regulation Amendment Act*		The *Residential Rent Regulation Amendment Act* was retroactive
August 1992	*Rent Control Act*	Ministry of Housing	Until June 1998, landlord and tenant issues were covered by the *Landlord and Tenant Act*, part IV
June 17, 1998	*Tenant Protection Act*	Ontario Rental Housing Tribunal (ORHT)	Since June 1998, the same statute and the same decision-making body decided both landlord and tenant applications and rent control applications
January 30, 2007	*Residential Tenancies Act, 2006* (RTA)	Landlord and Tenant Board (LTB)	
The following three acts were packages of amendments to the RTA, affecting both landlord and tenant–type issues and rent control issues. Some of the amendments were not brought into force when the bulk of the Act in question took effect.			
May 30, 2017	*Rental Fairness Act, 2017* (RFA)		
December 6, 2018	*Restoring Trust, Transparency and Accountability Act, 2018* (Bill 57)		
July 21, 2020	*Protecting Tenants and Strengthening Community Housing Act, 2020* (Bill 184*)		

* Unless the act establishes a whole new regime, or has a catchy title like the "*Rental Fairness Act*," people often continue to refer to the act by its bill number, such as Bill 184. That is not strictly correct, but it is very common. As well, you can see "Bill 184" is much shorter than the official name of the Act.

The same judge might hear a murder trial one week, a dispute over a multimillion-dollar construction contract the next week, and then landlord and tenant cases. The judges did not like the landlord–tenant work. In addition, the judges were relatively highly paid, which the province did not like (since the province had to pay their salaries).

retroactive
applies to a situation that arose before the relevant legislation was enacted

Also, the County Court and, in turn, the Ontario Court (General Division) were part of the regular judicial system, and they could not be reformed to create a new system to address the volume of landlord and tenant cases that had arisen because of the growth of the tenant population in the 1960s and 1970s. Once the government gave landlord–tenant cases to a separate tribunal, that tribunal could operate in a way that is different from that in which the ordinary court system operates. In particular, the administrative staff could take more action in processing files and in issuing orders, and the tribunal members could behave in a manner that is different from the way in which judges usually behave. (The main difference between the court system and the tribunal system is the willingness of the landlord and tenant adjudicators in the latter system to ask tenants questions to find out what their problem is rather than depending on the tenants or a tenant's representative to bring out their issues.)

Since June 1998, landlord–tenant law and rent control have been covered by the same statute, the *Residential Tenancies Act, 2006*.[1] As well, the same decision-making body has decided both landlord–tenant applications and rent control applications.[2]

What Does the RTA Regulate?

The RTA governs virtually all aspects of all residential tenancies in Ontario, including the relationship between landlords and residential tenants, the amount of rent permitted to be charged, and permissible rent increases.

Relationship issues include:

- the creation of a tenancy;
- the **tenancy agreement**;
- the right to remain in occupation following the termination date of a tenancy unless grounds for eviction exist;
- **eviction** proceedings;
- rights on terminations for repairs or renovations;
- **assignments** and **sublets of tenancies**;
- entry;
- changing locks;
- maintenance, repair, vital service, and cleanliness obligations;
- remedies for harassment by a landlord;
- selecting tenants;
- eviction proceedings, including grounds and procedures; and
- special rules for care home rental units, mobile home sites, and land lease sites.

tenancy agreement
an agreement in which a property or part of a property is rented by a landlord to a tenant

eviction
removal of a tenant from a rented property, not by the tenant's choice

assignment of a tenancy
a tenant turning over the rights and obligations of a tenancy to a different tenant

sublet of a tenancy
a tenant turning over the rights and obligations of a tenancy to a different tenant for a limited period of time

1 SO 2006, c 17 [RTA].

2 Before June 17, 1998, federally appointed judges heard landlord and tenant cases such as eviction and disrepair claims. Since that date, all disputes involving residential rental premises have been heard by a specialized tribunal, whose members are appointed by the provincial government. The members of the Board do not have to be lawyers, but they often are. This systemic change resulted from a 1996 decision of the Supreme Court of Canada, *Reference re Amendments to the Residential Tenancies Act (NS),* [1996] 1 SCR 186, 1996 CanLII 259. In that case, the Supreme Court found that because residential tenancy disputes were not within the jurisdiction of federally appointed judges in all provinces at Confederation, it was not necessary for decisions in these matters to be made by such judges. (An earlier case had held that because Ontario's landlord and tenant law had been determined by federally appointed judges, that practice had to continue to be followed. In the later case, the Supreme Court looked instead at Quebec, where provincially appointed judges had determined landlord and tenant cases before, at, and after Confederation.)

Rent-related issues include:

- application of the RTA,
- lawful rent determination,
- lawful rent increases,
- impact on rents when services are added or removed,
- rent decreases for certain property tax decreases,
- rent-discounting rules, and
- notice requirements.

Whom Does the RTA Regulate?

In general, the RTA applies to landlords and tenants of all residential rental units in Ontario. This includes landlords and tenants of all types of rental housing, from units in high-rise apartment buildings to single-family homes. Most of the rules for rentals in those widely different building types are the same.

However, there are special rules for certain types of rental units, such as care homes, mobile home parks, and land lease communities. There are partial exemptions for specific types of rental units, such as government housing where rent is geared to income. There are also certain exemptions from the rent-setting restrictions for new construction and for some new rentals.

Chapter 3 examines in detail what is regulated by the RTA.

Who Does the Regulating?

The Landlord and Tenant Board is the decision-making body created by the RTA. Through its members, the Board makes decisions in applications filed under the RTA. Members are appointed by the provincial government for a fixed term (generally two years). Members are often reappointed for a second term of three years and a third term of five years, but the government has an internal directive that members are not to be appointed for more than ten years.

Across Ontario, there is one Board chair, several vice-chairs (usually one for each region), and about 35 regular and dozens of part-time members of the Board, who are known as adjudicators. The Board has administrative staff located in Toronto and in various offices across Ontario. Each office has a manager, and there are managers for the various regions, such as the North, the East, the South-West, Mississauga, Toronto South, Toronto North, and Toronto East.[3]

The Board has **exclusive jurisdiction** over virtually all disputes that might arise between a landlord and a residential tenant. However, the Board does not have jurisdiction over issues related to tenancies that are exempt from the RTA (see Chapter 3 for more detail). Nor does the Board have jurisdiction over claims for more than $35,000.

exclusive jurisdiction
being the only legal body that can rule on a particular matter

Usually a single adjudicator hears an application. However, the RTA gives the Board the power to sit as a panel of more than one member. It might exercise this power if an application raises a significant issue that will affect many cases, or to help train a new Board member.

3 Because there are so many residential tenants in Toronto, the city is divided into three regions, whereas the whole of Eastern Ontario is one region and the whole of Southwestern Ontario is another region.

In 2010, the Landlord and Tenant Board was grouped with several other tribunals under the umbrella of Social Justice Tribunals Ontario (SJTO). At that time, SJTO was a cluster of eight adjudicative tribunals with a mandate to resolve applications and appeals brought under eight statutes relating to child and family services oversight, youth justice, human rights, residential tenancies, disability support and other social assistance, and special education.

In 2019, six more tribunals were added to the cluster of tribunals that make up SJTO, so that it now consists of 14 tribunals.

The goal of the cluster is to achieve administrative efficiencies (often through sharing facilities), thus providing better customer service at a lower cost to taxpayers.

As their mission, SJTO and Tribunals Ontario state that they and their constituent tribunals will:

- provide fair, effective, timely, and accessible dispute resolution;
- promote consistency in the application of the legislation and its processes while remaining responsive to differing cases, party needs, and an evolving understanding of the law;
- maintain the highest standards of professionalism, integrity, and quality of work; and
- be leaders in the administrative justice community.

Further information is available at <https://tribunalsontario.ca>.

SJTO and Tribunals Ontario publish a Code of Conduct, an Ethics Plan, and Conflict of Interest Rules. SJTO and Tribunals Ontario also issue basic rules of procedure that apply to all of their tribunals, subject to any specific rules for each tribunal.

Applications Concerning the Landlord–Tenant Relationship

The RTA governs all applications that deal with the rights and obligations that arise in the relationship between residential landlords and tenants. These include a tenant's obligations to pay rent and to behave in a manner appropriate to the rental community, and a landlord's obligations to maintain the premises properly and to provide the tenant with the facilities to which the tenant is entitled.

Applications to the Board may be made by landlords or tenants. The types of applications that a landlord might make under the RTA about the landlord–tenant relationship include applications for:

- termination because of non-payment of rent,
- termination because of inappropriate behaviour,
- termination in order to perform major repairs or renovations,
- termination because the tenant failed to leave after giving notice or agreeing to do so,
- termination because the tenant failed to meet the terms of a settlement or order,

- an order to collect **arrears** of rent or compensation for damage,
- an order requiring the tenant to provide a key to a lock that the tenant changed without permission, and
- a remedy for an unauthorized assignment or sublet.

arrears
payments that are past due

The types of applications that a tenant might make under the RTA about the landlord–tenant relationship include applications for:

- a rent **abatement** for inadequate maintenance;
- an order that the landlord make certain repairs;
- an order for the payment of money on the grounds that the landlord failed to apply or pay interest on the last month's rent deposit;
- a remedy because the landlord harassed the tenant, withheld a **vital service**, entered the tenant's unit illegally, changed the locks without supplying a key, or interfered with the tenant's quiet enjoyment of the premises;
- a remedy because the landlord gave a notice of termination in bad faith; and
- an order authorizing an assignment or sublet.

abatement
reduction in a rent because of deficiencies in a rental unit or building

vital services
fuel oil, electricity, gas, hot water, cold water, and heat between September 1 and June 15

Applications Concerning the Amount of Rent

The RTA governs the amount of rent and other charges that a landlord is permitted to require or that can be agreed upon by the parties. Accordingly, where disputes arise or where a landlord wants to apply for an **above-guideline rent increase**, the Board will hear and determine the case.

Applications to the Board concerning the rent and charges may be made by landlords or tenants. The types of applications about the rent that a landlord might make under the RTA include applications:

- about whether the RTA applies, and
- for an above-guideline rent increase.

above-guideline rent increase
a rent increase greater than the guideline

The types of applications about the rent that a tenant might make under the RTA include applications for:

- a rent rebate because the landlord charged an illegal rent or charge,
- a rent reduction because the landlord removed or reduced a **service or facility**,
- a rent reduction because of a decrease in municipal taxes, and
- a rent reduction because the landlord failed to comply with the terms of an agreement for an above-guideline rent increase.

services and facilities
things provided with a rental unit such as parking, appliances, common-area cleaning, lockers, laundry facilities, heating, and air conditioning

KEY TERMS

abatement, **7**
above-guideline rent increase, **7**
arrears, **7**
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commercial tenancies, **2**
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rent control, **2**
retroactive, **3**
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statute, **2**
sublet of a tenancy, **4**
tenancy agreement, **4**
vital services, **7**

REVIEW QUESTIONS

1. What act or acts apply today to disputes between residential landlords and tenants?
2. Name two acts that applied to rent disputes in the past.
3. Name two acts that applied to maintenance disputes in the past.
4. Are the basic rules for rentals in large apartment buildings the same as or different from those for rentals of single-family homes?
5. Are the basic rules for rentals of expensive units the same as or different from those for rentals of more affordable units?
6. If a landlord of a large apartment building wants to evict a tenant, what tribunal or court does the landlord apply to?
7. Name three applications a landlord might want to make.
8. Name three applications a tenant might want to make.