

# Housing Division Notice

Date: August 27, 2013

HDN#: 2013 - xxx

This applicable legislation/policy is to be implemented by the Housing Provider(s) under the following programs:

Please note if your program is **not checked**, this change is **not applicable** to your project.

<input type="checkbox"/>
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Federal Non-Profit Housing Program (Rent Supplement Units Only)

Private Non-Profit Housing Program

Co-operative Non-Profit Housing Program

Municipal Non-Profit Housing Program (Pre-1986)

Local Housing Corporation

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## Subject: LOCAL STANDARD – LEASES/OCCUPANCY AGREEMENTS

### 1. PURPOSE:

To inform all housing stakeholders of the local background and compliance standard under the *Housing Services Act, 2011* (HSA) and associated regulations related to lease/occupancy agreements for units in Part VII housing projects.

### 2. COMPLIANCE STANDARD:

The *Housing Service Act, 2011* establishes the service manager's authority to set local standards on prescribed matters. Under section 75 of the Act, a Housing Provider shall operate a Part VII housing project and govern itself in accordance with both the prescribed provincial requirements and local standards made by the service manager. A service manager may only make local standards with respect to prescribed matters. These prescribed matters are outlined in section 100 of O.Reg 367/11 and include the following:

- i. Conflicts of Interest of Directors, Employees and Agents of a Housing Provider.
- ii. The minimum number of meetings of the Board of Directors of a Housing Provider that must be held.
- iii. The remuneration of the Directors of a Housing Provider.
- iv. Property management relating to Part VII housing projects, including the procurement of, and contracts for, property management services.
- v. Leases for units in Part VII housing projects.
- vi. Multi-year financial plans.

A local standard does not apply to the extent that it conflicts with a provincial requirement, unless the provincial requirement provides otherwise.

### 3. LOCAL STANDARD:

- (1) Every Housing Provider and every household that rents or occupies a rent-geared-to-income unit or a market rent unit in the Housing Provider's housing site shall enter into a lease or, in the case of a co-operative housing unit, an occupancy agreement that meets the following requirements:
  - i. The term of the lease/occupancy agreement must not exceed one year.
  - ii. The lease or agreement must specify the amount of rent/housing charge that would be payable if the unit were a market unit, the amount of geared-to-income rent/housing charge payable for one month by the household as determined by the Service Manager (or its delegate), and all other charges that the Housing Provider may impose under *Housing Services Act*, the *Cooperative Corporations Act*, the *Residential Tenancies Act, 2006* and associated Regulations
- (2) The lease or agreement must:
  - i. restrict the occupancy of the unit to the members of the household named at the time the lease or agreement is entered into and any additional persons whose occupation of the unit is agreed to subsequently by the Housing Provider,
  - ii. require the household to advise the Housing Provider of any persons who cease to occupy the unit or commence to occupy the unit after the lease or agreement is executed, and
  - iii. prohibit the assignment of the lease or the agreement, as the case may be, and prohibit the household from renting or subletting the unit.
- (3) The lease or agreement must provide that the amount of the geared-to-income rent/housing charge payable by the household for the unit is subject to change if the household's financial circumstances change to such an extent that the Service Manager (or its delegate) determines that the amount of the geared-to-income rent/housing charge payable by the household should change or that the household is no longer eligible for rent-geared-to-income assistance due to legislation changes or where the maximum rent is amended by provincial Rent Control Guidelines.
- (4) The lease or agreement must be executed by every individual:
  - i. 16 years of age or older whose income is taken into consideration in determining the amount of rent/housing charge payable by the household, or
  - ii. who is a member of the household and at least 18 years of age.
- (5) A Housing Provider shall establish a policy and notification procedures for the temporary accommodation of guests in its rent-geared-to-income units and shall provide a copy of the rules in either written or electronic format to the Service Manager upon request and to the households residing in those units (at initial move in and as amended from time to time)
- (6) A Housing Provider shall establish rules for the internal transfer of households receiving rent-geared-to-income assistance and shall provide a copy of the rules in either written or electronic format to the Service Manager upon request and to the households residing in those units (at initial move in and as amended from time to time).

**4. ACTION:**

The local standard in this Housing Division Notice (HDN) is effective immediately.

The HDN is to be reviewed by the Board of Directors and noted within the respective agenda and meeting minutes at the earliest possible opportunity.

As this HDN specifically addresses matters pertaining to the Board, including but not limited to rules of order and governance, and/or matters requiring specific Board action including leases and occupancy agreements, it must be received and acknowledged by Board. A copy of this HDN shall be retained with the corporate bylaws and made available for reference and review.

**5. AUTHORIZATION:**

*Original signed by*

Date:

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Louise Stevens  
Director, Municipal Housing

**Appendix 1 - Background and Additional Information**

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**HDN:** 2013-189  
**Date:** August 27, 2013  
**Subject:** Local Standard – Lease/Occupancy Agreement

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### **Lease/Occupancy Agreement**

A lease/occupancy agreement is a contract between the Housing Provider and the tenant/member that grants occupation during a certain period in exchange for a specified rent. As such, they come under the contract laws of the Province and can protect landlords as much as tenants/members. It is vital, therefore, for Housing Providers to ensure that all lease/occupancy agreements contain the correct provisions and conditions.

The lease/occupancy agreement must outline the terms of tenancy and the regulations (*Housing Services Act Residential Tenancies Act, Co-operatives Corporations Act, Corporate By-laws, and Personal Information Protection and Electronic documents Act (PIPEDA)* etc.) with which the tenant must comply in order to occupy a unit and receive rent-geared-to-income subsidy, if eligible.

It is essential that a lease/occupancy agreement be as transparent as possible with tenants about their rights and obligations. As such, lease/occupancy agreements should contain references to local rules regarding eligibility for rent-geared-to-income assistance (e.g. local occupancy standards, absence from unit, ceasing to meet occupancy standards, guest policy, definition of income, internal transfer policy, sharing of common facilities, etc). This information can be provided in the form of a tenant handbook, included in corporate by-laws or attached as schedules (recommended method) to the lease/occupancy agreement.

Housing Providers must provide prospective tenants/members with a lease/occupancy agreement to review and sign before moving into unit. As a best practice, Housing Providers should schedule an appointment for lease/occupancy signing and key pick-up and send the lease/occupancy out in advance. The appointment should be used to review important details of the lease/occupancy agreement verbally with the tenant initialing the important statements to indicate they have read and understand them.

Lease/occupancy agreements sometimes inadvertently contain provisions that are unlawful, or perhaps were at one time lawful under former legislation but are not any longer. While not necessarily harmful, they are completely unenforceable, despite the fact both parties may have agreed to the terms. However, they may have some deterrent value. All lease/occupancy agreements should be reviewed by legal representation as an important legal document.

### **Lease/Occupancy Agreement Renewal**

Even though the RGI lease/occupancy agreement can have a term of no longer than one year, it is not necessary to sign a whole new agreement with the RGI household every year or when the RGI changes. Housing Providers can extend the terms and conditions of the lease/occupancy agreement by executing a lease/occupancy agreement addendum. Any addendum must state the new market rent and the RGI rent as well as any additional charges that the tenant is required to pay. Addenda which increase the market rent only (not the RGI rent) cannot be issued more frequently than every 12 months (or as permissible under co-ops by-laws) for either market or RGI tenants and must adhere to the notice requirements for RGI rent changes in the *HSA*.

For market rent tenants a notice of rent increase which complies with the *RTA* (90 day notice of increase, no increases more frequently than every 12 months) or a co-op's by-law is sufficient. If Housing Providers choose this option, after the initial term of the lease/occupancy agreement, the tenancy becomes a month-to-month tenancy under the same terms and conditions of the original lease/occupancy agreement. Housing Providers are not able to change one year lease/occupancy agreements until the term is up (unless agreed to by the tenant). If a Housing Provider's tenancy is month-to-month, the tenant can be asked to sign a new lease/occupancy agreement any time but they are not obligated to do so.

For both RGI and market tenants, Housing Providers will want to sign a new lease/occupancy agreement if there has been a change in household composition required to sign the lease. If a new member is added to the lease/occupancy agreement (e.g. someone who turns 18 or a new partner who moves in) this person must sign an addendum that should be attached to the lease/occupancy agreement. Housing Providers cannot force the original tenant to sign a new lease/occupancy agreement, which makes the addendum the practical solution.

### **Financial Testing**

Under the current RGI service agreement, Housing Providers are responsible for collecting the annual income verification and financial testing of RGI households. Even though the definition of income is no longer required to be included in the lease/occupancy agreement, Housing Providers should include it along with the eligibility criteria for qualifying for rent-geared-to-income assistance. This will serve Housing Providers well at the Landlord and Tenant Board or in court proceedings with an application based on misrepresentation of income.

### **Communication**

Before executing a new lease/occupancy agreement, or renewing an existing lease, Housing Providers should let tenants/members know what changes to expect and why they are necessary. Tenants/members will need to be assured that their rights and privileges are protected.

This local standard or sample tenancy agreement provided by ONPHA or CHF is not intended as a substitute for "legal advice". (Certain provisions of any Tenancy Agreement may not be enforceable, as the rights and obligations expressed in any agreement are subject to the provisions of the *Residential Tenancies Act* and other relevant law. The *RTA* plainly provides that, except in very limited circumstances, "a provision in the tenancy agreement that is inconsistent with this Act or the regulations is void".)

**Resources** – sample leases or occupancy agreements can be obtained through the [Housing Division](#), [Ontario Non-Profit Housing Association](#) or [Co-operative Housing Federation](#).