

## BUSINESS

# Pandemic highlights gap in Ontario tenant protections

By **Rosa Saba** Calgary Bureau

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Peter returned from the hospital to his basement apartment on April 26 to find the locks had been changed.

The notice on the door said he was being evicted for nonpayment of rent for more than 15 days.

There was — and still is — a freeze on residential evictions due to the COVID-19 pandemic. But tenants in Ontario who share a kitchen or bathroom with their landlord or the landlord's family are [exempt](#) from the Residential Tenancies Act (RTA). Peter was being evicted under the Commercial Tenancies Act (CTA), before the commercial eviction freeze was enacted.

Peter said his basement unit had a kitchen, but that his landlord removed all the kitchen appliances shortly before evicting him to make it look as if they shared a kitchen. (His landlord disputes this and says the appliances were removed months before Peter arrived.)

Peter, who didn't want his real name used because he is now living at a shelter and is concerned this story could affect his search for housing, hasn't managed to get his belongings back — he said when he tried, he was arrested and ticketed for trespassing.

He's in contact with a legal clinic, which he said is recommending he files a T2 to the Landlord and Tenant Board, which concerns harassment, illegal entry and illegal lockouts.

Shaun Harvey, a paralegal with Riverview Legal Services in Kitchener, has been trying to call the government's attention to the issue of tenants being exempt from the RTA for years. The pandemic has made the problem more visible, he said.

Students and vulnerable, low-income people are those most often affected by the RTA exemption, said Harvey. He wants the government to amend the Residential Tenancies Act to include this type of tenant.

Harvey has sent his recommendations to the Attorney General, the provincial NDP, his local representatives and the Premier's office.

"The idea is to close the gap," he said.

The Residential Tenancies Act, created in 2006, does not apply to people who "are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent."

It also does not address how such cases should be governed.

Harvey said there are three ways they are often dealt with:

One, the landlord simply changes the locks on the tenant. Two, the landlord calls police and has the tenant removed for trespassing. (Harvey said neither action is legal.) Three, the landlord applies to the Superior Court of Justice to obtain a writ of possession, which gives a sheriff legal power to enforce an eviction.

But a 2019 Ontario Superior Court decision seems to have paved the way for tenants in this situation to be evicted as commercial tenants, said Harvey.

In the case, *Newman v. Glanville*, a man first sought to evict his tenant with whom he shared a kitchen and bathroom under the Residential Tenancies Act. The judge ruled that the Commercial Tenancies Act would apply in this case, and used the CTA to rule in favour of the landlord.

The CTA states that it “does not apply to tenancies and tenancy agreements to which the Residential Tenancies Act applies,” implying that it could apply to all other tenancies.

Harvey argues that thanks to this case, tenants under this exemption are more likely to be evicted via the CTA, which sets out much harsher terms of eviction than the RTA. And trying to fight these evictions is much more costly, he said.

Joe Myers, executive director of Willowdale Community Legal Services, said in an email that the clinic receives “many” calls from tenants who are exempt from the RTA due to sharing a bathroom or kitchen with their landlord.

“This is a common situation in Toronto where rents are high and there is little affordable housing. Tenants living in these types of sharing arrangements are vulnerable as their landlords can evict them without having to resort to the legal process outlined in the RTA — serving a notice of termination, filing an application at the Landlord and Tenant Board, convincing the Board to issue an order terminating the tenancy at the conclusion of a hearing,” said Myers.

“These types of tenancies and evictions were common prior to the COVID-19 pandemic and remain so.”

Harvey’s suggestion is to bring tenants like Peter into the RTA, with a couple of conditions, such as no automatic lease renewal.

He wants to see the same change apply to students who are residents of school institutions, who face the same issue right now: “(The) school can turf them without any real process.”

Benjamin Ries, staff lawyer for housing at the University of Toronto’s legal clinic, said it’s a “major problem” that tenants sharing a bathroom or kitchen with their landlord have much less security than those with their own apartments.

He said the tenants exempt from the RTA are in a wide range of situations, some of which closely resemble a “normal” tenancy, and yet aren’t regulated.

Ries believes it’s more common today for people to be living in this kind of situation than it was when the rules around residential tenancies were first drawn up in Ontario in the 1970s, in part thanks to platforms such as Facebook, which make it easy for people to find roommates, as well as a rise in housing inaffordability.

“Our whole idea of what housing looks like has evolved,” he said, adding it’s time that we take that into consideration.

At minimum, Ries said many of these currently exempt tenants should have more protections when it comes to being told they have to move out.

That so many people are now sharing apartments with nonfamily members illustrates the lack of affordable housing, said Ries.

“Plainly what we pay people on (Ontario Works) and (Ontario Disability Support Program) is not enough anymore, in a city like Toronto anyway, to afford your very own self-contained apartment,” he said.

Kenn Hale, director of advocacy and legal services for the Advocacy Centre for Tenants Ontario (ACTO), said while there isn’t evidence of an “overwhelming tide” of illegal evictions during the pandemic, most tenants evicted during the pandemic have been either exempt or in a grey area when it comes to the RTA.

These tenants are more likely to be low income and vulnerable in other ways, since they can’t afford to rent a full apartment, he said. And because they aren’t covered under the RTA, neither they nor their landlords have access to the type of dispute resolution available to “regular” tenants and landlords.

“The answer really is to have accessible dispute resolution processes and have a landlord tenant board that can respond to the variety of situations that people find themselves (in), rather than leaving these people completely outside of any kind of legal protection.”

These tenants are also exempt under the human rights code, said Hale, which usually prevents people from being denied tenancy due to factors including race or disability, something ACTO has been advocating to change.

Hale agreed with Ries that the issue is illustrative of the overall lack of affordable housing, and thinks these tenants could be brought into the RTA “with some special rules” to account for their situations.

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