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LEGAL MARIJUANA

Legal Issues for Landlords



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Issues Concerning Landlords

- Consumption
 - Smoke
 - Smells
 - Safety

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Issues Concerning Landlords

- Production
 - Property Damage
 - Smells
 - Electricity Consumption
 - Safety

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Landlord and Tenant Law

- Historical Underpinnings
 - Law developed in mid/late 19th C
 - Clear power imbalance between landlords and tenants
 - Tenants very vulnerable

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Landlord and Tenant Law

- Public Policy
 - Favours “security of tenure” (i.e. maintaining housing)
 - Seeks to even out the imbalance
 - “Consumer” Protection Legislation

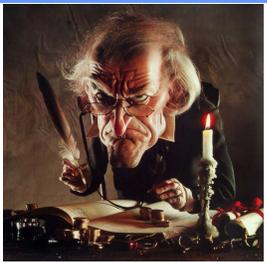
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How Law Sees Landlords

- Big
- Resourced
- Empowered



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How Law Sees Tenants

- Small
- Under-resourced
- Weak
- Vulnerable



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Residential Tenancies Act

- Section 3: the Act prevails
 - Leases which purport to remove tenant rights/benefits/protections under the Act are void
- RTA offers many protections to tenants
- Creates barriers to easy evictions

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Approach to Issues

- Prevention
 - Avoiding a legal issue in the first place:
 - Implementing Helpful Leases
 - Education

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Approach to Issues

- Protection
 - Dealing with inevitable issues but putting the best foot forward
 - Building your case
 - Evidence
 - Managing Optics

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Prevention

- Changing Lease Terms
 - “Legacy” Leases
 - Leases implemented prior to marijuana legalization
 - New Leases
 - Leases implement after or in anticipation of marijuana legalization

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Prevention

- “Legacy Leases”
 - Options:
 - Try to bring marijuana use or production under existing lease terms
 - i.e. current prohibitions on smoking, terms relating to property damage, safety, etc.

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Prevention

- “Legacy Leases”
 - Options:
 - Bring behaviour under section 21 RTA

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Residential Tenancies Act

- Tenant’s Covenants (section 21)
 - Rent paid when due
 - No significant interference with landlord/other tenants
 - No illegal acts or illegal trade
 - Must not endanger persons or property

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Residential Tenancies Act

- Tenant’s Covenants (section 21)
 - Must not do or permit significant damages to the premises
 - Premises must be maintained in reasonably clean condition
 - Must vacate at expiration or termination of tenancy

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Prevention

- Legacy Leases
 - Ask tenants to sign new leases including updated language
 - See below - updated language

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Prevention

- Legacy Leases
 - Consideration
 - Must “give” tenant something: new term, free wifi, reduced rent, free parking ...
 - If no consideration, lease likely unenforceable

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Addressing Tenant Behaviours

- Leases
 - Clauses in leases can address tenant behaviours
 - **But** cannot run afoul section 3 (i.e. take away statutory rights)

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Addressing Tenant Behaviours

- Section 21
 - Show that tenant behaviours contravene section 21
 - i.e. significant interference
 - i.e. significant damage
 - i.e. reasonably clean condition

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Prevention

- New Leases
 - To contain specific language prohibiting consumption and production
 - Must not offend section 3

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Prevention

- Suggested Term: Marijuana Consumption

Prohibition on Tobacco and Marijuana Smoke

In consideration of the Landlord's desire to offer tenants a smoke-free environment, the health hazards associated to second hand smoke, other safety concerns and the nuisance caused by the presence of smoke including lasting odours which permeate walls, floor coverings and other interior finishes, this premises is strictly non-smoking. This prohibition includes the use of both tobacco and marijuana products which have undesirable effects on the property of the landlord and the peaceful enjoyment of other tenants. Breach of this prohibition will be considered a substantial breach of the lease and as a result the landlord will take any and all action, including eviction.

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Prevention

- **Suggested Term: Marijuana Production**
Prohibition on the Production of Marijuana
 In consideration of the nuisance smells, the property damage associated with increased indoor moisture levels, the danger of overburdened electrical systems, and safety concerns related to these things, there is a prohibition on the growth of marijuana in the premises. Further, in consideration of the nuisance smells associated with the production of marijuana derivatives and other deleterious effects caused by such activities, the production of marijuana derivatives is also strictly prohibited. Any breach of these prohibitions will be considered a substantial breach of the lease and as a result the landlord will take any and all action, including eviction.

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Prevention

- **Education**
 - What? Disseminate information about the concerns relating to marijuana and landlord's intended policy.
 - Handouts, posting conspicuously. Advertise in online portals.

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Prevention

- **Education**
 - Ex. Grow lights are considered fire hazards
 - Ex. Increased electricity may overload building circuits
 - Ex. Second hand smoke is second hand smoke
 - Cigarettes or marijuana

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Prevention

- Education
 - Document efforts
 - Who? What? When? Where?
 - Assume this information will be needed for an affidavit one day ... if Kenny posted information sheets, he should note the day and where they were posted
 - If handouts were slipped under doors, when?
 - Do things more than once to increase likelihood that everyone is exposed to information
 - Keep a log

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Protection

- Preparing for the Inevitable
 - Tenants will consume marijuana
 - Tenants will grow marijuana

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Protection

- Putting your best foot forward
 - If you can't prove it, it didn't happen
 - Ex. Donny smelled smoke in the hallway, unless Donny was able to determine which unit the smoke came from, how can you prove which tenant broke the rules?
 - Smoke poured out of the door, I knocked on the door and they admitted to it, maintenance people have observed evidence of consumption

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Protection

- Putting your best foot forward
 - Keep detailed and accurate records
 - Anytime an incident occurs then all of the following should be address (Who? What? When? Where? Why? How?)

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Protection

- Putting your best foot forward
 - Onerous but necessary
 - A lack of evidence will almost always be a reason to refuse an application
 - *Assume* the Court does not want to grant your application

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Protection

- Putting your best foot forward
 - Consider RTDRS - rules of evidence don't apply
 - *If you can verify a statement with documentation then you can bolster its credibility and reliability*

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Protection

- Putting your best foot forward
 - Consider Provincial Court
 - *Often coming before the Court months after an issue - memories fade and people become unsure*

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Protection

- Putting your best foot forward
 - Consider Court of Queen's Bench (Chambers)
 - *Max 10 minutes to present - stronger evidence is better at telling the story than a string of smaller pieces of circumstantial evidence*

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Protection

- Putting your best foot forward
 - What does that look like?
 - If flyers are slipped under doors, note the day it was done and the time of day
 - If flyers are posted, note when and where these are posted, post in multiple places so you can say why people likely saw it

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Protection

- Putting your best foot forward
 - Once is good, twice is better
 - Thoroughness and repetition are good
 - Have a meeting, insist on signatures of attendees, distribute minutes
 - Offer information at social events
 - Many ways to do this ...

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Managing Appearances

- Remember how landlords are viewed compared to tenants
- Courts favour:
 - Landlords who try to work with tenants before running to court
 - Landlords who have clear evidence
 - Landlords who are trying to protect other tenants

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Managing Appearances

- Keep in mind what you are asking a Court to do:
 - Remove an individual from housing
 - Often tenants are present at RTDRS or in Court
 - Be gracious, be flexible, fair, honest
 - Listen to the Court when it is commenting or making suggestions

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