

The Cannabis Act and Residential Tenancies

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In April, the federal government introduced Bill C-45 (the “*Cannabis Act*”), which provides for the legalization of recreational marijuana in June 2018. Until the *Cannabis Act* comes into force, the possession of marijuana for recreational use remains illegal (although individuals with licenses issued by Health Canada are authorized to access mail-order products from licensed producers, register to produce a limited amount for themselves, or designate someone to produce it for them).

Many aspects of the regulation of legalized recreational marijuana will be left up to individual provinces. Ontario announced last month that it will start consultations on matters such as age limits and other restrictions on the use, sale and cultivation of the drug.

Landlords of residential buildings must be aware of marijuana’s legal status in order to properly deal with:

- tenants illegally using, growing or selling the drug under both the current regime and once the *Cannabis Act* and regulations come into force, and;
- tenants legally using or growing marijuana, either with a valid Health Canada license under the current regime, or in the future once the recreational use of marijuana is legalized.

Since we do not yet know the details of how marijuana will be regulated in Ontario, we can only look to the tools currently available in order to inform approaches that may be taken in the future.

The *Residential Tenancies Act* (the “RTA”) addresses neither smoking tobacco nor smoking marijuana directly, but landlords have been able to rely on certain provisions of the RTA to combat unwanted use or production of marijuana in the premises.

Landlords have seen some success using section 61 of the RTA, which provides that tenancies may be terminated if the occupant of a rental unit commits an illegal act. In these cases, the Landlord and Tenant Board (the “LTB”) has held that tenants (or their guests) who possess or use marijuana without a medical marijuana license commit an illegal act that provides sufficient cause to terminate the tenancy.¹ Once recreational marijuana is legalized, landlords are likely to only be able to rely on section 61 in narrow circumstances, such as if the tenant is underage.

Under section 64 of the RTA, a tenancy may be terminated where the tenant is substantially interfering with the reasonable enjoyment of other tenants or the landlord. This ground is more difficult to establish than an allegation that a tenant has committed an illegal act, since whether interference is sufficiently “substantial” to warrant termination involves a highly fact-dependent analysis. In one case, for example, the LTB determined that a tenancy should not be terminated for substantial interference despite multiple complaints by other tenants. The LTB held that the evidence demonstrated that the tenant only smoked outside the rental unit (though still on the property) and possessed a medical marijuana license authorizing her to do so.² On the other hand, the mere legalization of marijuana will not mean that its smoke would not constitute substantial interference.

The *Smoke-Free Ontario Act*, which bans smoking of tobacco in common areas in apartment buildings and condominiums, is another tool that can be used to curb the impact of second-hand smoke on other tenants. The province recently passed an amendment to the *Smoke-Free Ontario Act* to include second-hand smoke from medical marijuana and not just tobacco.³ Once the *Cannabis Act* becomes law, it is likely that the *Smoke-Free Ontario Act* will be further revised to include all marijuana smoke.

The legalization of recreational marijuana raises a number of issues for landlords. One issue in particular is the need to balance the rights and interests of different tenants - even though the temptation may be to treat marijuana use the same as tobacco, landlords should be aware that the issue is likely more nuanced because of marijuana's recognized medicinal uses. Just how these nuances will manifest themselves remains to be seen as further detail on proposed regulations is announced and those regulations are tested.

¹ See, for example, TNL-44510-13 (Re), 2013 CanLII 36859 (ON LTB), NOL-18727-15 (Re), 2015 CanLII 32932 (ON LTB) and TSL-72843-16 (Re), 2016 CanLII 39781 (ON LTB). It should, however, be noted that in NOL-08411 (Re), 2010 CanLII 11998 (ON LTB), the LTB refused to terminate the tenancy where a tenant was found in possession of only a small amount of marijuana.

² CEL-57398-16 (Re), 2016 CanLII 44629 (ON LTB).

³ At the time of writing, this amendment has yet to come into force.

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