

The two lawyer rule



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When finding legal representation to assist in purchasing or selling a property, the standard practice in Ontario is that the buyer and the seller will each retain their own lawyer. Both the Law Society of Ontario and the government of Ontario have enacted rules intended to protect vendors and purchasers as well as the land registry system in place in Ontario. But are there situations in which the same lawyer can act for both the buyer and the seller?

The Rules of the Law Society of Ontario do in fact permit the same lawyer to repre-

sent both parties in a transaction in certain limited situations. These include transfers where the buyer and the seller are the same and the change is being made to effect a change in legal tenure or to effect a severance of land, certain transfers from estate trustees, and certain transfers where the buyer or the seller is a government body.

An exception to the two lawyer rule can occur when the buyer and seller are "related persons". In this case, "related persons" are defined as in section 251 of the Income Tax Act. This def-



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inition applies to both individuals and corporations, but in the case of individuals, related persons include

individuals connected by blood relationship, marriage or common-law partnership, or adoption. Each of

these terms also has a specific definition in the Income Tax Act.

Another allowable exception to the two lawyer rule is when a transfer occurs in which the buyer and/or seller live in a remote location where there is only one lawyer who can be retained for the transfer without causing unnecessary problems to the buyer and seller.

The two lawyer rule also permits different lawyers in the same firm to act for each party.

However, in all of the above cases, in this case the lawyer or law firm must be sure that there is no conflict of interest in accepting this joint retainer. In this situation, both the buyer and the seller will be clients of the lawyer or law firm.

Further, the buyer and

seller must be advised that the lawyer or law firm has been asked to act for both of them, that no information the lawyer or law firm receives from one party concerning the transaction can be treated as confidential from the other, and that if a conflict develops that cannot be resolved, the lawyer or law firm will not be able to continue to act for both or either and may have to completely withdraw their services. Consent to these stipulations must be acknowledged by the clients in writing.

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RENTAL GUIDE

Unless lease states otherwise, tenants will be allowed to smoke weed 'in a reasonable way'

BY DICKIE & LYMAN LLP

Who practice landlord/tenant law and other areas of law

Q: It would be helpful to get some clarification as to how the legalization of marijuana will affect landlords and tenants. As I understand it, if a current lease says No Smoking, then the tenant cannot smoke marijuana or cigarettes in the apartment. But if a smoking ban is not included in a current lease, can the tenant smoke marijuana in the apartment? What about the risk/harm of second-hand smoke, not to mention smell, on others in the building? What about children? Advice would be appreciated.

A: Subject to any restric-

tions the Province of Ontario enacts, after legalization tenants will be allowed to smoke marijuana in a reasonable way, other than where smoking is banned either in specific areas through legislation or bylaws (like common areas of an apartment building) or where the lease specifies no smoking of marijuana.

However, under Ontario's Residential Tenancies Act, a tenancy can be terminated if a tenant substantially interferes with the reasonable enjoyment of another tenant (or the landlord). Generally, in most buildings, a tenant is expected to put up with occasional exposure to second-hand smoke, but is not expected to put up with a lot of second-hand smoke. That is the situation now with cigarette smoke,

and will likely be the situation with marijuana smoke after legalization.

Avoiding too much second-hand smoke may mean the tenant who is smoking may need to smoke on the side of their apartment away from yours, opening a window to draw out the smoke or even using a fan to push the smoke out of a window away from your unit. The landlord should fill any obvious holes in the walls between your apartment and the smoker's apartment to minimize the entry of smoke.

Once any holes are sealed, if the smoker's efforts to avoid emitting significant smoke fail more than a few times a year (and the smoke continues to bother you), then the landlord can give them a notice of termination for interfering with

your reasonable enjoyment. This is similar to the situation regarding tobacco smoke.

If the smoker continues to spew out smoke within seven days of receiving the notice of termination, then your landlord can take them to the Landlord and Tenant Board to seek to evict them.

It is easier for a landlord to get smoking stopped or reduced if the tenant who is complaining has children who are affected by second-hand smoke, or has a medical problem, such as asthma, a heart condition or a smoke allergy.

It is harder for a landlord to get marijuana smoking stopped or reduced if the smoker has a medical certificate to use marijuana. However, even with the certificate, the smoker needs to make



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some effort to minimize interference with their neighbours. Among other arguments, the landlord can propose the tenant switch to using edibles to take in their marijuana dose.

Once the smoker is alerted to the fact that the smoking bothers another tenant

that much, and realizes that the landlord can take action, many smokers reduce and manage their smoking so that it really is only an occasional, minor annoyance. Other smokers may find a new place where they can smoke without all the limits.