



What you need to know about deposits when buying a home



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When purchasing any property, it is common practice that the purchaser will need to provide a deposit on the purchase price. For residential transactions in Ontario, this deposit is usually held by the listing agent, although sometimes a deposit may also be held by the vendor's or purchaser's solicitor.

There is no fixed rule as to what constitutes a sufficient amount to be submitted as a deposit. The amount can be seen to be a demonstration of the intention of

the purchaser. This may be especially important to the seller if there are several conditions included in the offer and the closing date is a long time away from the date the Agreement is reached. In most cases, the deposit will be determined by local practices. From the purchaser's point of view, they will want to make sure that the deposit is large enough to show that they are serious about the purchase, but not so high that it will make it difficult to obtain the financing for the transaction, or that the

amount of the deposit places the purchaser at financial risk should they not be able to complete the transaction.

It is important to remember that the deposit is not only a partial prepayment, but it is also very much security given to the seller that the purchaser will complete the transaction. In very hot housing markets, deposit amounts can easily reach very significant sums of money.

In a recent Ontario case, the purchasers decided less than a month prior to closing that they no longer wanted to go through with the transaction. On informing the seller's lawyer of this, the buyer's lawyer also demanded the return of the \$50,000.00 deposit, made on a purchase offer of \$990,000.00. In order to ensure this, the buyer's lawyer also registered a "cau-



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tion against title" on the subject property. This caution would have the effect of making it difficult for the sellers to close a transaction with another buyer until the caution was removed, as the sellers would not be able to provide clear title to the property. This tactic was not successful for the former buyers; the former buyers agreed to remove the caution, and were ordered to pay legal costs of approximately \$10,000.00.

The deposit, however, was to be held in trust pending the resolution of the case as the sellers seek damages.

If a buyer cannot close a purchase for a valid reason, they may be able to recover their deposit if they are able to prove this. Depending on the circumstances this may require an application to the court. Further, Court of Appeal decisions have confirmed that deposits that represent a significant percent-

age of the purchase price may be unreasonable. In these situations, even on the default of the purchaser, a portion of the deposit may be returned to the purchaser, unless the seller can prove special circumstances justifying such a significant deposit.

The deposit serves an important purpose for both the buyer and the seller. For both parties, working closely with a real estate agent and legal counsel can help ensure a level of comfort in determining the correct amount of the deposit. Thank you for reading.

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RENTAL GUIDE

Ontario tenancies renew automatically unless ended by tenant or landlord

BY DICKIE & LYMAN LLP

Who practice landlord/tenant law and other areas of law

Q: I am a landlord in Ottawa. In a few weeks I am going to trial in Small Claims Court, where I am suing a former tenant for moving out without notice last April 30. It took me two months to rent the unit, and I have claimed the lost rent and my advertising expenses. The tenant's defence is that the lease ended on April 30, and so they moved out. I told them that Ontario's law says that residential tenancies automatically renew

unless they are brought to an end by notice, but the tenant doesn't believe that. Even if I win, this whole exercise has been a hassle. I now contact my tenants two or three months before the end of their leases to find out whether they are staying, or to point out that they need to give me notice.

A: You are correct that Ontario's Residential Tenancies Act (RTA) provides that tenancies automatically renew if they are not brought to an end. The key section is Section 38. Furthermore, Section 37 says that tenancies

may only be terminated in accordance with the RTA, and Section 3 says the RTA applies despite any agreement to the contrary.

Sections 43 and 44 provide for tenant notices to terminate. Tenants can choose to terminate at the end of their lease, or after that, provided they terminate at the end of a period of the tenancy. For most tenancies, that means at least 60 days' notice to the end of a month.

There are a number of sections that allow landlords to terminate tenancies. However, a landlord needs a specific reason to end a tenancy,

and the mere ending of a lease is not one of the approved reasons. The approved reasons include fault grounds such as nonpayment of the rent, undue damage, disturbing other tenants, illegal acts or persistent late payment of rent.

Other grounds that allow a landlord to terminate include taking the property back for personal use, substantial renovations, conversion to a non-residential use or demolition.

Going back to your appearance in court, you will want to take three copies of your lease and proof of the advertising costs, as well as copies

of the relevant sections of the RTA. You should also review and take with you all correspondence from the tenants during the whole tenancy in case they try to say that they notified you of their intention to terminate, or you and they agreed to terminate.

Going forward, your contact with tenants to find out whether they are staying or giving you notice is a good idea, especially for tenants who are new to Ontario or new to renting. Landlords are not required to do that, but it can avoid misunderstandings.

For tenancies made on

or after April 30, landlords should use the new standard lease. However, even that does not make this tenant obligation crystal clear. The new lease states, "The tenant does not have to move out at the end of the term. See Parts C and D." Part D says, "the landlord or tenant must follow the rules of the Act when ending a tenancy," and "the tenant may end a tenancy by giving the landlord proper notice ... [of] at least 60 days if they have a monthly or fixed term tenancy." Nowhere does the information state clearly, "if the tenant wants the tenancy to end, they must give notice."