

TO: Chair and Members of the Board of Health

FROM: Dr. Gayane Hovhannisyan, Acting Medical Officer of Health
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SMOKE-FREE CLAUSES IN THE STANDARD LEASE UNDER THE *RESIDENTIAL TENANCIES ACT*

Recommendation

It is recommended that the Board of Health:

- 1) *Receive Report No. 033-17 re: Smoke-Free Clauses in the Standard Lease Under the Residential Tenancies Act (RTA);*
- 2) *Communicate its support for the inclusion of smoke-free clauses in the Standard Lease under the RTA by sending a letter to the Honourable Chris Ballard, Minister of Housing/Minister Responsible for the Poverty Reduction Strategy;*
- 3) *Forward Report No. 033-17 to Ontario Boards of Health and the Smoke-Free Housing Ontario Coalition to communicate its support for smoke-free housing policy measures; and*
- 4) *Direct staff to participate in consultation processes to inform regulatory changes under the RTA to increase the availability and enforceability of smoke-free clauses within tenancy agreements.*

Key Points

- Second-hand smoke drifts between units in multi-unit housing complexes, and is especially harmful to children, the elderly, those who have chronic health problems and those who are pregnant.
- The current mechanism for enforcement of no-smoking clauses in lease agreements can be cumbersome, and has raised questions about the legality of these policies.
- The opportunity exists to prescribe smoke-free clause options by regulation in the proposed “prescribed form of tenancy agreement” (Standard Lease), under the RTA, to provide a consistent approach for the promotion and enforcement of smoke-free provisions within tenancy agreements.

Second-Hand Smoke Exposure in Rental Housing

Under the [*Smoke-Free Ontario Act*](#), smoking is prohibited in any common area in a condominium, apartment building, or university or college residence, including elevators, hallways, parking garages, entertainment rooms, laundry facilities, lobbies and exercise areas. However, the *Act* does not prohibit smoking in private units, on balconies, or around the entrances to housing complexes. As a result, second-hand smoke exposure continues to be an issue for those living in multi-unit housing complexes. No matter how well built or maintained a building may be, second-hand smoke can seep through shared walls, ventilation systems, doors, windows, shared balconies and gaps around electrical outlets and plumbing.

While second-hand smoke exposure can cause a range of adverse health effects for anyone, it can be especially harmful to children, the elderly, those who suffer from chronic health problems and those who are pregnant. If a tenant is smoking in one unit and the smoke drifts into a neighbouring unit that is supposed to be smoke-free, often the only solution to reducing the unwanted exposure to second-hand smoke is to move and seek housing elsewhere. However, moving may not be feasible for those with disabilities, older adults and those with limited incomes. For those with greater choice and the means to move, smoke-free housing may still not be an option due to the lack of availability in Middlesex-London. Therefore, in 2015, the Board of Health endorsed the actions and priorities outlined by the Smoke-Free Housing Ontario Coalition,

attached as [Appendix A](#), and directed staff to “encourage the Ontario Ministry of Housing to develop government policies and programs to facilitate the provision of smoke-free housing ([Report 013-15](#)).”

Enforceability of Smoke-Free Policies

No-smoking provisions within a multi-unit housing environment offer many benefits, including a healthier environment, reduced exposure to second-hand smoke, reduced risk of fire and lower cleaning and insurance costs. Therefore, smoke-free multi-unit housing should be made available for those who want it, and be offered in both the private and community/non-profit multi-unit housing markets. However, the current mechanism for enforcement of no-smoking policies can be cumbersome, and has raised questions about the legality of these policies. It is the responsibility of the landlord to ensure reasonable enjoyment for all tenants, and, if there is a breach, such as drifting second-hand smoke, there must be adequate data to demonstrate frequent and ongoing interference with normal use and enjoyment of the housing unit. According to [case law analysis](#), although the majority of cases taken to the Landlord Tenant Board (LTB) have prevailed in favour of the landlord, LTB decisions are not bound by precedent and may not be pertinent to other situations that appear before the LTB. This means that even if a landlord follows the procedure to enforce a provision in the lease, there is no guarantee of success. If a no-smoking policy is created and cannot easily be enforced, the impact is felt by the landlord and by the tenants, who selected the housing unit based on the guarantee of a smoke-free home. Landlords and tenants desire assurance that smoke-free housing policies are enforceable.

Bill 124, the *Rental Fairness Act* and the Standard Lease

In March 2016, as part of its Long-Term Affordable Housing Strategy, the Ontario Government considered making amendments to the RTA to encourage the participation of small landlords and private homeowners in the rental housing market, while maintaining strong protections for tenants. The introduction of [Bill 124, the *Rental Fairness Act*](#), enabled the Government to entertain amendments to the RTA to meet goals related to increasing availability and affordability of housing. During the public consultation process for Bill 124, the Smoke-Free Housing Ontario Coalition recommended that amendments be made to the RTA to enable landlords to terminate tenancy based on violations of no-smoking provisions in leases. Additionally, advice was provided that no-smoking provisions under the RTA should address smoking of all products, including tobacco, cannabis and shisha, and that the RTA should clearly define areas where no-smoking prohibitions can be prescribed to provide maximum tenant protection from second-hand smoke.

The Government chose not to include smoke-free clauses in the RTA; however, regulations under the RTA are now being developed. The opportunity exists to prescribe smoke-free clause options by regulation in the proposed “prescribed form of tenancy agreement” (Standard Lease). The Standard Lease would outline the agreement between the housing provider and the tenant, including the conditions under which occupancy can be terminated. The inclusion of smoke-free clause options to the Standard Lease would make it clear to landlords that they can include no-smoking clauses, and would provide a consistent approach for the promotion and enforcement of smoke-free provisions within tenancy agreements. It is recommended that the Board of Health communicate its support for the inclusion of smoke-free clauses in the Standard Lease by sending a letter (attached as [Appendix B](#)) to the Honourable Chris Ballard, Minister of Housing/Minister Responsible for the Poverty Reduction Strategy.

This report was prepared by the Chronic Disease Prevention and Tobacco Control Team, Environmental Health and Infectious Disease Division.



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This report addresses the following requirements of the Ontario Public Health Standards (revised May 2016):
Foundations: Principles 1, 2; Comprehensive Tobacco Control: 1, 6, 7, 9.