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Bill 155

An Act respecting life leases

Ms A. Hoggarth

Private Member's Bill

1st Reading September 20, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Life Leases Act, 2017*.

A life lease is a written tenancy agreement that involves payment of an entrance fee for a rental unit. The person who is first entitled to occupy the rental unit is granted a right of occupancy for life or for a fixed term of not less than 50 years.

The Bill authorizes certain payments in respect of life leases and requires the disclosure of information relating to life leases. The information that a landlord is required to disclose to a tenant includes the estimated entrance fee, the projected completion date, information regarding governance and management of the residential complex, the estimated amount of other fees, including monthly occupancy fees, and the estimated refund that a tenant would receive upon termination of the lease. Prescribed landlords are required to maintain a reserve fund to pay for any unforeseen major repair to or replacement of assets of the complex. The landlord is also required to maintain insurance policies in accordance with the regulations. The Bill includes rules relating to meetings of tenants and board meetings, including requirements in respect of notice and timing. A landlord is required to appoint a trustee to receive and administer a tenant's entrance fee in accordance with specified requirements.

An Act respecting life leases

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**PART I
GENERAL**

Definitions

1 (1) In this Act,

“entrance fee”, in relation to a rental unit, means an amount, other than a deposit or rent payable on a periodic basis annually or more frequently, paid or payable in respect of the rental unit to the landlord or a trustee; (“frais d’entrée”)

“initial tenant”, in relation to a rental unit, means the first tenant to enter into a life lease in respect of the rental unit; (“premier locataire”)

“landlord” means a landlord, as defined in the *Residential Tenancies Act, 2016*, of a residential complex and includes, in relation to a proposed residential complex, a person who,

- (a) will be the landlord of the complex, or
- (b) alone or together with others initiates or sponsors,
 - (i) the organization, development or marketing of the complex, or
 - (ii) the founding or constituting of the landlord; (“locateur”)

“life lease” means a written tenancy agreement under or in respect of which,

- (a) an entrance fee has been paid or is payable in respect of a rental unit, and
- (b) the person first entitled to occupy the rental unit under the agreement is granted a right of occupancy for life or for a fixed term of not less than 50 years; (“bail viager”)

“Minister” means the member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

“occupancy date”, in relation to a residential complex, means the first day of the month after the month in which an occupancy permit for the complex is issued by an authority having jurisdiction to issue the occupancy permit, and for the purpose of determining the occupancy date, where the development of a residential complex occurs in stages the complex is deemed to be the part that contains the tenant’s rental unit; (“date d’occupation”)

“offer to lease” means an offer by a landlord or tenant to enter into a life lease in respect of a rental unit; (“offre de bail”)

“possession date” means the date when a tenant is entitled to occupy a rental unit under a life lease and the landlord is entitled to payment of rent under the lease; (“date de possession”)

“pre-lease payment” means an amount paid by a prospective tenant to a landlord as an expression of interest in entering into a life lease in respect of a rental unit in a residential complex under development or proposed to be developed; (“paiement antérieur au bail”)

“prescribed” means prescribed by a regulation made under this Act; (“prescrit”)

“projected completion date” means the date disclosed to a tenant as the latest date when a rental unit is to be available for occupancy by the tenant; (“date prévue d’achèvement”)

“refund fund” means one or more funds established under subsection 18 (2); (“fonds de remboursement”)

“tenant” means a tenant, as defined in the *Residential Tenancies Act, 2006*, under a life lease and includes a prospective tenant; (“locataire”)

“trustee”, in relation to a residential complex, means a trustee appointed by the landlord of the complex to perform such functions as may be provided for under this Act and the regulations. (“fiduciaire”)

Proposed rental unit

(2) In this Act, where a life lease is in respect of a rental unit not yet in existence, “rental unit” means the proposed rental unit and “residential complex” means the residential complex or proposed residential complex in which the proposed rental unit is to be located.

General application

2 (1) Except as otherwise provided in this Act or the regulations, this Act applies to and in respect of every life lease, every tenant and landlord under a life lease, every rental unit that is the subject of a life lease and every residential complex that contains such a rental unit, whether the life lease is entered into or the rental unit or residential complex comes into existence before or after this Act comes into force.

Crown bound

(2) This Act binds the Crown.

Restriction or waiver of application void

3 A provision of an agreement that restricts or waives or purports to restrict or waive the application of this Act, or a person's rights or obligations under this Act, is void.

Minister may prepare guide

4 (1) The Minister may publish a guide for consumers regarding life leases.

Guide to be provided

(2) The Minister may, by regulation, require that a guide published under subsection (1) be provided by prescribed persons to tenants and prospective tenants under this Act.

PART II PAYMENTS AND DISCLOSURE

Permitted payments

5 (1) Subject to subsection (2), a landlord may receive or permit a trustee to receive from a tenant a pre-lease payment or an entrance fee in respect of a life lease or a residential complex.

Pre-lease payments prohibited after occupancy date

(2) A landlord shall not receive or permit a trustee to receive a pre-lease payment from a prospective tenant of a residential complex on or after the occupancy date of the complex.

Information to be disclosed

(3) Before receiving or permitting a trustee to receive a pre-lease payment, a landlord shall disclose to the tenant, in accordance with the regulations,

- (a) the estimated entrance fee that will be payable in respect of each type of rental unit in the complex or each type in which the tenant has expressed an interest;
- (b) the projected completion date;
- (c) prescribed information regarding the governance and management of the complex, including information regarding staffing, finances and the roles and responsibilities of tenants;
- (d) the estimated amount of any other fees that may be charged, including monthly occupancy fees, and a summary of the process by which any future increases to fees are to be determined and communicated;
- (e) the estimated amount of the refund that the tenant would receive upon termination of the lease and information regarding the method of calculating that amount; and
- (f) any additional prescribed information.

Amount of pre-lease payment

(4) A landlord shall not receive or permit a trustee to receive a pre-lease payment that exceeds the prescribed amount or the amount that is determined in a prescribed manner.

Entrance fees permitted

(5) A landlord may receive or permit a trustee to receive an entrance fee from a tenant if,

- (a) the tenant has signed a life lease or an offer to lease and given it to the landlord;
- (b) the landlord has disclosed to the tenant in accordance with the regulations,
 - (i) if the entrance fee is refundable, the minimum amount that will be contributed to the refund fund, and
 - (ii) any additional prescribed information;
- (c) the landlord has given the tenant a written statement of the tenant's cancellation rights;
- (d) where the tenant is an initial tenant, the landlord has appointed a trustee to receive and administer entrance fees; and
- (e) where the entrance fee is refundable, the landlord has appointed a trustee to administer a refund fund.

Acknowledgement of receipt

6 A person who receives a payment in respect of a pre-lease payment or entrance fee shall give the payer a written acknowledgement of receipt, setting out the prescribed information.

Pre-lease payment held in trust

7 (1) A landlord who receives a pre-lease payment from a prospective tenant shall hold the amount in trust for the benefit of the tenant until it is paid out in accordance with this section or is otherwise refunded by the landlord.

Pre-lease payment: life lease entered

(2) Where a landlord and a tenant enter into a life lease in respect of which the tenant has paid a pre-lease payment, the landlord shall pay the pre-lease payment,

- (a) to the trustee, to be credited to the entrance fee payable by the tenant; or
- (b) to the tenant, if the entrance fee has been paid in full.

Pre-lease payment: development not completed

(3) The landlord shall refund a tenant's pre-lease payment, unless it has already been paid to the trustee under clause (2) (a), if it becomes reasonable to conclude that the development of the residential complex will not be completed by the projected completion date disclosed to the tenant.

Pre-lease payment: failure to enter into lease

(4) If a tenant who paid a pre-lease payment in respect of a residential complex and the landlord have not entered into a life lease by the occupancy date of the complex, unless the pre-lease payment is refunded to the tenant, the landlord shall pay the pre-lease payment,

- (a) to the tenant, if by the occupancy date the landlord has not offered a life lease to the tenant on terms and conditions comparable to those contained in a life lease of a rental unit in the same complex comparable to the rental unit in which the tenant expressed an interest; and
- (b) in any other case, to the trustee.

Time of payment

(5) Each amount payable under subsection (2), (3) or (4) shall be paid within 14 days after it first becomes payable.

Entrance fee held in trust

8 (1) A landlord or a trustee who receives an entrance fee from a tenant shall hold it in trust for the benefit of the tenant until the period for cancellation under subsection 9 (2) has expired.

Refund of entrance fee to tenant

(2) In prescribed circumstances, the landlord shall refund the full entrance fee or cause it to be refunded to the tenant within the prescribed period of time.

Statement of cancellation rights from landlord

9 (1) A landlord shall include, in accordance with the regulations, a prescribed statement of cancellation rights in a life lease that is given to a tenant.

Cooling-off period

(2) Subject to subsection (3), a tenant may, by written notice to the landlord before taking possession of the rental unit, cancel his or her life lease within seven days after the day on which the life lease or offer to lease signed by the tenant is given to the landlord.

Statement of cancellation rights not in lease

(3) If a statement of cancellation rights is not included in the life lease or is not in the prescribed form, the seven-day period under subsection (2) does not commence until the day on which the landlord gives the tenant the prescribed statement of cancellation rights.

Adequacy of wording

(4) A notice of cancellation is adequate if, however expressed, it indicates the intention of the tenant to cancel the life lease.

Effective date of cancellation

(5) A life lease is cancelled under this section when notice is given to the landlord in accordance with the regulations.

Refund of entrance fee to tenant

(6) If a tenant cancels a life lease under this section, the landlord shall, within 14 days after notice is given under subsection (5), refund the full entrance fee or cause it to be refunded to the tenant.

Failure to give possession

10 (1) Subject to the regulations, a tenant of a rental unit who has not been given vacant possession of the rental unit 30 days after the projected completion date may, by written notice to the landlord before being given vacant possession of the unit, cancel his or her life lease.

Effective date of cancellation

(2) A cancellation under subsection (1) is effective when notice of the cancellation is given to the landlord in accordance with the regulations.

Early notice

(3) A tenant may, during the 30-day period after the projected completion date, give the landlord early notice of cancellation, but the cancellation is effective only at the end of the 30-day period and only if by that time the landlord has not offered the tenant immediate and vacant possession of the rental unit.

Tenant entitled to full refund

(4) A tenant who cancels a life lease under this section is entitled to a refund of his or her full entrance fee.

Refund within 60 days of cancellation

(5) The landlord shall refund the entrance fee, or cause it to be refunded, to the tenant within 60 days after the cancellation becomes effective.

Notice of possession date

11 (1) A landlord shall give an initial tenant written notice of the possession date at least 60 days before that date.

Tenant may agree to earlier date

(2) A tenant who receives notice under subsection (1) may agree to an earlier possession date.

**PART III
RESERVE FUNDS, INSURANCE AND ANNUAL REPORTING**

Reserve fund for prescribed landlord

12 (1) A prescribed landlord of a residential complex shall, at all times after the occupancy date of the complex, maintain a reserve fund to pay for any unforeseen major repair to or replacement of assets of the complex, including, without limitation, roofs, exteriors, buildings, roads, sidewalks, sewers, heating, electrical or plumbing systems, elevators and laundry, recreational and parking facilities.

Same

(2) Under no circumstances shall the reserve fund maintained for a residential complex be used for any purpose related to another complex.

Use of reserve fund

(3) In addition to being used for the purposes set out in subsection (1), funds set aside under that subsection may be used for such matters as may be prescribed.

Insurance required

13 (1) The landlord of a residential complex shall, at all times during and after the development of the complex, maintain one or more insurance policies in accordance with the regulations.

Notice to tenants

(2) The landlord shall give at least 30 days prior written notice of any cancellation, lapsing or reduction of the insurance required under subsection (1) to all tenants of the residential complex.

Meetings

14 (1) The landlord of a residential complex shall, at least four times in each calendar year, call a meeting of the tenants in accordance with the regulations.

Timing of meetings

(2) In scheduling the meetings, the landlord shall ensure that a minimum of 60 days have elapsed between meetings.

Notice of meeting

(3) The landlord shall give each tenant of the residential complex a written notice of the time and place of the meeting at least 30 days and not more than 50 days before the meeting.

Content of notice

(4) The landlord shall include in or with the notice the prescribed information, set out in accordance with the regulations.

Same

(5) In addition to complying with subsection (4), the landlord shall include in or with the notice the following information if the meeting is a meeting referred to in paragraph 1 of subsection (7):

1. A statement setting out the revenues and expenses of the residential complex for the preceding fiscal year.
2. A detailed budget for the current fiscal year.
3. A statement setting out the balance of the residential complex's reserve fund.
4. Such other information as may be prescribed.

Manner of notice

(6) The landlord shall,

- (a) deliver a copy of the notice to each residential unit in the complex;
- (b) post a copy of the notice in a prominent location in the complex that is accessible to tenants;
- (c) send the notice electronically, if the landlord and tenants regularly communicate by email; and
- (d) give the notice in such other manner as may be prescribed.

Meeting

(7) The landlord shall ensure that the meeting is conducted in accordance with the following rules:

- 1. At least one meeting held during the first six months of each fiscal year must include a review of the prescribed financial information regarding the residential complex.
- 2. Such other rules as may be prescribed.

Notice of board meeting

15 (1) The landlord shall give each tenant representative that has been selected by the tenants in accordance with the regulations,

- (a) a copy of the landlord's by-laws; and
- (b) notice of the time and place of each board meeting, with the agenda for the meeting, at the same time and by the same method that notices and agendas are given to the directors.

Right to attend and be heard

(2) A tenant representative, or his or her alternate, is entitled to place matters on the agenda for a board meeting and to attend and speak at the meeting.

Confidential matters

(3) A landlord may restrict the rights of a tenant representative under subsection (2) to matters that do not involve personal information pertaining to individual tenants or to personnel of the landlord.

Board minutes

(4) After each board meeting, the landlord must give each tenant representative a copy of the minutes of the meeting, not including any part of the minutes that contains personal information about a tenant or about personnel of the landlord.

Access to minutes

(5) A tenant representative may give other tenants access to the minutes.

Audited financial statements

16 (1) If a prescribed landlord has not obtained audited financial statements for the residential complex for the preceding fiscal year, the landlord shall,

- (a) obtain those audited financial statements as soon as practicable, if requested to do so in writing by a majority of tenants; and
- (b) continue to obtain audited financial statements for each succeeding fiscal year.

Tenant entitled to a copy of audited statements

(2) If a prescribed landlord has obtained audited financial statements for the residential complex for the preceding fiscal year, whether obtained under subsection (1) or otherwise, the landlord shall provide a copy of the statements to a tenant on request.

Personal information in financial statements

(3) For the purposes of subsection (2), the landlord must take reasonable steps to avoid disclosing personal information pertaining to personnel of the landlord.

Contact information

17 A landlord shall ensure that contact information for the management of the residential complex is given to each tenant on the tenant's occupancy date and that updated information is given to each tenant when the information changes.

PART IV TRUSTEES AND REFUNDABLE ENTRANCE FEES

Appointment of trustee re entrance fees

18 (1) A landlord who enters into a life lease with an initial tenant shall appoint a trustee to receive and administer the tenant's entrance fee in accordance with this Act and the regulations.

Appointment of trustee re refund fund

(2) If an entrance fee in respect of a residential complex is refundable, the landlord shall establish, and shall appoint a trustee to administer, a fund to secure the landlord's obligations to refund entrance fees.

Qualifications of trustee

(3) A trustee in respect of a residential complex shall be a person who meets the prescribed requirements and qualifications for trustees.

Entrance fee paid to trustee

19 (1) Upon the expiry of the period for cancellation, the landlord shall pay the full entrance fee of each initial tenant, together with any interest earned on it, to the trustee, unless the landlord has refunded it to the tenant.

Trustee to hold entrance fees and pre-lease payments

(2) Any pre-lease payments paid to a trustee and all entrance fees received by that trustee, other than those entrance fees that are required to be refunded or paid to a tenant, shall be held by the trustee for the benefit of the tenants until the landlord has met the prescribed requirements.

Prerequisites to payment

(3) A trustee shall not pay to or for the benefit of the landlord any amount held by the trustee under subsection (2) until the landlord has provided to the trustee such information and documents as may be prescribed.

Use of funds

(4) Funds paid to or for the benefit of the landlord of a residential complex by the trustee shall be used for such purposes as may be prescribed.

Minimum refundable

20 The regulations may prescribe the circumstances in which an entrance fee payable in respect of a residential complex is refundable and may prescribe a minimum refundable amount.

Refund fund

21 (1) If any entrance fee paid or payable in respect of a residential complex is refundable, the landlord shall, before the occupancy date of the complex, contribute the prescribed amount or the amount determined in accordance with the regulations to the refund fund.

Refund of entrance fees

(2) A tenant whose entitlement to a refund of all or part of his or her entrance fee has not been paid in full is entitled to be paid in accordance with the regulations, out of the funds available in the refund fund, the balance owing by the landlord to the tenant.

PART V OFFENCES AND PENALTIES

Offence: false or misleading statement

22 (1) A landlord, or a person who for consideration is engaged in the marketing or development of a residential complex, is guilty of an offence if the landlord or other person makes a statement that is false or misleading with respect to any material fact or who omits to state any material fact, the omission of which makes the statement false or misleading,

- (a) to a prospective tenant that may induce or induces the tenant to enter into a life lease; or
- (b) in a life lease, an offer to lease, an advertisement offering or soliciting interest in one or more life leases, or in any information required by this Act or the regulations to be disclosed to a tenant.

Offence: contravention of Act or regulations

(2) A person who contravenes any provision of this Act or the regulations is guilty of an offence.

Directors, officers and agents

(3) Every director, officer or agent of a corporation who authorizes, acquiesces in or participates in an offence under subsection (1) or (2) is guilty of an offence under subsection (1) or (2), as the case may be.

Defence

(4) No person is guilty of an offence under this section if the person can prove on a balance of probabilities that he or she took reasonable steps to avoid the commission of the offence.

Penalties

(5) A person guilty of an offence under this section is liable on summary conviction,

- (a) in the case of an offence under subsection (1),
 - (i) by an individual, for a first offence, to a fine of not more than \$20,000 or to imprisonment for a term of not more than one year, or both, and for a subsequent offence, to a fine of not more than \$30,000 or to imprisonment for a term of not more than three years, or both, and
 - (ii) by a corporation, for a first offence, to a fine of not more than \$50,000 and for a subsequent offence, to a fine of not more than \$60,000; and
- (b) in the case of an offence under subsection (2),
 - (i) by an individual, for a first offence, to a fine of not more than \$3,000 or to imprisonment for a term of not more than one year, or both, and for a subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or both, and
 - (ii) by a corporation, for a first offence, to a fine of not more than \$10,000 and for a subsequent offence, to a fine of not more than \$25,000.

Same

(6) A court convicting a person under this section may, in addition to any other penalty, order the person to pay compensation or restitution in respect of the offence.

Limitation

(7) A prosecution for an offence under this section may be commenced not later than one year after the day on which evidence sufficient to justify a prosecution for an offence under this section came to the knowledge of the Minister.

**PART VI
REGULATIONS**

Regulations by L.G. in C.

23 The Lieutenant Governor in Council may make regulations,

- (a) governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations;
- (b) defining any word or expression used in this Act but not specifically defined in this Act;
- (c) exempting residential complexes, rental units, tenants or landlords under life leases, or a class of any of them, from this Act or the regulations or a specified provision of this Act or the regulations;
- (d) governing the assignment of life leases in circumstances where assignment is not addressed in a life lease agreement;
- (e) governing notices required to be given under this Act;
- (f) governing transitional matters relating to the coming into force of this Act;
- (g) governing conflicts between this Act and other Acts;
- (h) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purposes of this Act.

**PART VII
COMMENCEMENT AND SHORT TITLE**

Commencement

24 This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

25 The short title of this Act is the *Life Leases Act, 2017*.