



Tip Sheet For Tenants

PRIVATE AGREEMENTS

Prepared by the Tenant Duty Counsel Program & Funded by Legal Aid Ontario

This publication contains information intended to assist the general public. It is not legal advice about your situation. You should talk to a lawyer or legal worker for advice on your particular situation.

WHAT IS A PRIVATE AGREEMENT?

A private agreement (also called a “side agreement”) is an agreement made between a landlord and a tenant “on the side” (often as a last resort) to allow a tenant to keep their home, once an eviction order already exists. In such an agreement, the tenant often promises to make specific payments by specific deadline dates to catch up with the rent and the landlord promises not to evict the tenant with the eviction order, so long as the tenant makes all the payments as promised. The agreement will set out dates the payments are due and how much is due on each payment date.

It is recommended that you always obtain legal advice before making any private agreement with your landlord, as there are risks with such an agreement if either the you or the landlord does not keep to their part of the bargain. Also, the private agreement may be outside the jurisdiction of the Landlord and Tenant Board (“the Board”). In other words, if the landlord breaches the agreement, there is **no** guarantee you can make any claim against your landlord at the Board. If you breach the agreement, the landlord can go straight to the Sheriff to have the order enforced by locking you out.

WHEN MAY I WANT TO DO A PRIVATE AGREEMENT WITH MY LANDLORD?

When the landlord already has an eviction order, the landlord may be willing to give you extra time to get caught up on paying the rent and costs. This would be a “private agreement” or “side agreement”. This agreement does **NOT** replace the eviction order. It is made *in addition* to the order. The Board’s eviction order would still exist. The eviction order still says you must pay all that you owe in 11 days or be evicted. However, the side agreement puts the Sheriff on hold, and extends the period of time in which you have to pay all the rent and costs.

WHO ARE THE PARTIES TO THE PRIVATE AGREEMENT?

The private agreement is between you and your landlord.

IS THE AGREEMENT LEGAL?

Yes. The agreement is legal and binding on the parties. It is always a good idea to keep a **written** copy of the agreement so you can back up your side of the story. The written agreement is your protection in case something should go wrong. Without the written agreement, you will have a very difficult time trying to prove to the Board that you had an agreement and what the agreement said.

WHAT ARE SOME OF THE THINGS THE PRIVATE AGREEMENT SHOULD CONTAIN?

At the very least, the private agreement should address the following:

1. The name(s) of the parties;
2. The address of the rental unit;
3. The Board file number;
4. The total amount of money owing;
5. The date(s) the payment(s) are going to be made;
6. How the payment(s) are going to be made (cash, money order, certified cheque);
7. The landlord will provide the tenant with a written receipt upon payment;
8. So long as all the payments in the agreement are made in full and on time, the eviction; order will never be used to evict you; and
9. The signatures of all the parties and the date.

HOW SHOULD I PAY THE LANDLORD?

After every payment, make sure you get a receipt from the landlord. The receipt should contain the following information:

1. The date you made the payment;
2. The amount of the payment; and
3. The signature of the person you gave the payment to.

TIP FOR TENANTS: Try not to leave the payment in a drop-off box. Often these payments go missing. Also, the landlord may not check the box regularly. If the landlord therefore receives the payment late, you could be in trouble.

WHAT HAPPENS IF I MISS A PAYMENT?

It is very important that you make every payment in full and on time according to the side agreement, otherwise the side agreement may *not* protect you from being evicted. If you do not make **any one** of the payments in full and on time, you should tell your landlord as soon as possible. It will be your **landlord's choice** whether to give you some extra time to come up with the money or whether to call the Sheriff to come and change the locks on your apartment.

SOME HELPFUL TIPS TO REMEMBER WHEN ENTERING INTO A PRIVATE AGREEMENT

1. Don't let yourself be talked into a payment plan that is not realistic. Do not offer to make a payment if you will not have the money. Generally, it is a good idea to agree to set the dates when payments will be due, shortly after you get paid.
2. Always get your private agreement in writing.
3. When making a payment, always get a receipt from the landlord that is signed, dated and specifies the amount that you paid.
4. It is always a good idea to get legal advice **before** you sign the agreement.

For your information and assistance, see the attached sample private agreement.

WHERE CAN I GET MORE INFORMATION?

Contact your local **Community Legal Clinic** for free advice on landlord and tenant matters. To find the telephone number for your clinic call Legal Aid Ontario at (416) 979-1446 or 1-800-668-8258.

You can also call the **Tenant Hotline** at 416- 921-9494 for free information and referrals to your local legal clinic.

You can find information on line at www.acto.ca or www.cleo.on.ca.

You can call the Landlord and Tenant Board toll free at 416-645-8080 from within Toronto calling area or 1-888-332-3234 from outside Toronto. Their internet address is www.ltb.gov.on.ca

SAMPLE Private Agreement

Tenant:
Landlord:
Address:
File No.:
Date:

1. The parties agree to the standard 11 day order in consideration of this agreement.
2. The parties agree that there is \$3,000.00 owing to the landlord in rent arrears to September 30, 2005.
3. The parties agree that there is \$150.00 owing to the landlord for the Landlord and Tenant Board application fee.
4. The parties agree that there is one NSF charge in the amount of \$25.00.
5. The total amount owing to the landlord as of September 30, 2005 is \$3,175.00.
6. The tenant will pay \$1000 today by way of money order.
7. The balance owing after this payment is made will be \$2,175.00.
8. The tenant will pay this outstanding balance as follows:

(a)	October 1, 2005:	October Rent
(b)	October 20, 2005:	\$1,000.00
(c)	November 1, 2005:	November Rent
(d)	November 20, 2005:	\$1,000.00
(e)	December 1, 2005:	December Rent
(f)	December 20, 2005:	\$175.00
9. All of the payments set out in paragraph 8 will be made by guaranteed funds.
10. The landlord will provide the tenant with a receipt, signed and dated, upon payment.
11. The parties understand that as long as the tenant makes all of the payments as outlined in paragraph 8 in full and on time, that Order TSL-00000 will be unenforceable. That is, if the tenant falls behind in rent for January 2006 or anytime thereafter, the landlord must begin the eviction process again by re-applying to the Landlord and Tenant Board.
12. If the tenant does not make any ONE of the payments outlined in paragraph 8 on time or in full, the landlord may take Order TSL-00000 to the Court Enforcement Office (Sheriff) immediately.

Signature of the Tenant

Date

Signature of the Landlord

Date