



— RESIDENTIAL · GUIDE

Buying a home with a tenant in it

Your rights and obligations when a property comes with an existing tenant, and what "vacant possession" actually requires.

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You found a place you like, and then you learn there is a tenant living in it. This is common, especially with condos, investment properties, and homes with basement apartments. Whether that tenant is a problem or a non-issue depends entirely on one question you need to answer before you make your offer: do you want to move in yourself, or are you happy to keep the tenant? The legal path is completely different depending on the answer, and getting this wrong is one of the more painful mistakes a buyer can make.

Start by deciding what you actually want

There are really two situations:

- You want the property empty so you (or your family) can move in. You need vacant possession on closing.
- You are buying it as an investment and you are fine keeping the existing tenant. You are buying the property subject to the tenancy.

Everything flows from this choice, so make it before you write the offer, not after.

If you want to move in: you need vacant possession

Here is the single most important thing to understand, because buyers get caught by it constantly. As the new owner, you cannot simply evict the existing tenant because you bought the place. A tenant in Ontario has strong protection under the residential tenancy rules, and buying the property does not give you a shortcut around them.

If you want the home empty, the obligation to deliver it empty has to fall on the seller, and it has to be written into your agreement as a requirement for vacant possession on closing. The seller, as the current landlord, is the one who has to lawfully end the tenancy before closing.

Even then, ending a tenancy so a purchaser can move in is not a simple or instant thing. In Ontario, a tenancy can be ended for a purchaser's own use only by following the process in the residential tenancy legislation. In general terms, that process requires:

- The right legal grounds, namely that the buyer (or certain close family members) genuinely intends to move in and live there.
- Proper written notice on the correct prescribed form, given the required amount of time in advance.
- Compensation to the tenant, which the law now requires in these situations.
- And if the tenant does not leave voluntarily, an application to the Landlord and Tenant Board, because a landlord cannot force a tenant out on their own.

Two practical warnings:

- The timelines are real and not short. Because notice periods and the Board's process take time, a seller often cannot deliver vacant possession quickly. If you need to move in on a tight timeline, build that into your planning.
- The rules here have been amended in recent years, including the notice and compensation requirements and the consequences for bad-faith personal-use evictions. Do not rely on a number or a process you read in an older article. This is an area to confirm with your lawyer against the current rules before you commit.

The cleanest approach when you want to live there: make vacant possession a clear condition of your purchase, and let your lawyer confirm the seller can actually deliver it lawfully and on time. If the seller cannot, you want to know before you are firm.

If you are keeping the tenant: buying subject to the tenancy

If you are an investor and a paying tenant is a feature, not a problem, the deal is more straightforward, but there are things to get right.

- You step into the landlord's shoes. You take the property with the existing lease and the existing tenant, on the existing terms. You generally cannot raise the rent just because ownership changed, and the tenant keeps the rights they already had.
- Get the lease and confirm the rent. Your lawyer should review the existing tenancy: the rent, the term, whether it is a fixed term or month to month, and any unusual terms. You are inheriting all of it.
- The last month's rent deposit must be transferred to you. Many tenancies include a last month's rent deposit. On closing, that deposit needs to be credited or assigned to you as the new landlord, because you are the one who will eventually have to apply it. This gets handled in the adjustments. Make sure it is not overlooked.
- Get an assignment and direction to the tenant. The tenancy should be properly assigned to you, and the tenant should be told, in writing, that you are the new landlord and where to pay rent going forward.
- Confirm the rent is current. Find out whether the tenant is in arrears, because you do not want to inherit a non-paying tenant unknowingly.

A note for either path

Whatever you decide, your agreement of purchase and sale needs to say it clearly. "Vacant possession on closing" and "buyer assumes the existing tenancy" are very different deals, and the agreement is where that gets locked in. Vague or silent agreements are where disputes start.

Bottom line

A tenant in the property is not a dealbreaker, but it changes the deal. If you want to live there, you need vacant possession delivered by the seller, and you need to understand that lawfully ending a tenancy for your own use takes time, the correct notice, compensation, and possibly the Board. If you are keeping the tenant, you inherit the lease, the rent rules, and the deposit, so review all of it before closing. Decide which path you are on before you make your offer, and talk to us so the agreement reflects what you actually want.

This is general information about buying tenanted property in Ontario, not legal advice for your purchase. Residential tenancy rules change and the details matter. Talk to us before you make an offer on a property with a tenant in it.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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