



LE PROTECTEUR DU CITOYEN

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Report by the Québec Ombudsman (summary)

Private seniors' residences: more than just rental businesses

Québec City, June 16, 2016

Summary

In Québec, there are more than 1,850 seniors' residences and this kind of lodging is growing, along with the proportion of elderly among the overall population. Seniors' residences registered with the Ministère de la Santé et des Services sociaux must offer at least two of the following services in addition to lodging: meals, personal assistance, domestic help, security, recreation or nursing care. The client population is people 65 and over, and the average age is 82.

If the title of the report qualifies these residences as "more than just rental businesses," it is because they provide care and services to people who, to varying degrees, need them for their daily well-being and safety. However, even though the services offered make them a distinct kind of rental operation, the legal framework is the same as for other kinds of housing rental. Everyone who lives there must, among other obligations, sign a lease in compliance with the *Regulation respecting mandatory lease forms and the particulars of a notice to a new lessee*.

More than just a lease...

In seniors' residences, the lease not only includes provisions for rental of the physical space that makes up the rental unit, but the building rules as well (i.e. various specific rules and regulations concerning enjoyment of the premises, use and maintenance of rental units, and use of common areas). A Schedule describes the nature, extent and cost of the services offered to tenants.

The Québec Ombudsman noticed that sometimes leases for these residences contain certain clauses in breach of legal and regulatory obligations:

- ▶ Landlords authorized to unilaterally terminate a lease or evict a tenant;
- ▶ Abusive fees for restoring the unit to its initial condition after the tenant moves out;
- ▶ Disclaimer of liability for the loss, theft or damage of property in the period covered by the lease;
- ▶ Landlords permitted to unilaterally modify the lease or the building rules;
- ▶ Control of the comings and goings of residents or of their visitors.

When tenants are dissatisfied with a residence, **their complaint is against an enterprise or individual on which or whom they depend every day for the care they absolutely need**. In such a context, tenants fear retaliation if they express their dissatisfaction overtly or turn to the Régie du logement for recourse. This impediment to the exercise of rights is very real.

A complex legal framework

The elderly who wish to have their tenant rights upheld face many obstacles. They must deal with:

- ▶ legal information about their rights and obligations ill-adapted to the context of seniors' residences;
- ▶ lack of resources to assist and guide them in understanding this information, in mounting a case and in exercising recourse before the Régie du logement;
- ▶ recourse consisting of procedures that can prove long and complex.

While many seniors can stand up for themselves, others have a very hard time doing this due to health problems, isolation or lack of support.

Recommendations: prevent litigation and facilitate recourse

The Québec Ombudsman has made seven recommendations aimed at fostering respect of the rights and compliance with the obligations of tenants and owners of seniors' residences. These recommendations involve, depending on the issue, the Secrétariat aux aînés, the Ministère de la Santé et des Services sociaux, the Régie du logement and the Minister of Municipal Affairs and Land Occupancy, entrusted with managing the Régie. The proposed solutions consist in:

- ▶ **Producing and distributing a comprehensive guide** for seniors' residence tenants and owners, explaining their respective rights and obligations regarding lease signing, modification or resiliation or recourse in the event of disputes.
- ▶ Amending the ***Regulation respecting the conditions for obtaining a certificate of compliance and the operating standards for a private seniors' residence*** to oblige the owners of these residences to **distribute copies of the building rules in effect and to make sure they are readily available at all times.**
- ▶ **Tasking community organizations** such as complaint assistance and support centres **to assist and guide tenants who ask for help** in initiating or exercising recourse for lease-related disputes.
- ▶ Under certain conditions, **broadening the scope of Régie du logement decisions in one tenant's favour to all other tenants** affected by a similar problem.
- ▶ **Analyzing the impact of the rent-setting method** on the funding of services offered by these residences and adopting measures to **prevent abusive rent hikes.**

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