

# **Best Legal Practices In Owning And Operating Rental Property: Leases and Evictions**

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**Let's Get Social:**



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# Introduction

\* About Bitia:

Real Estate Broker

Property Manager

Paralegal



**Disclaimer:** This presentation is not a basis for legal advice nor does it establish any sort of paralegal-client relationship. The information contained herein are only for purposes of general information. It is recommended that you should not rely on or take any action based solely upon the information contained in this presentation without the benefit of professional counsel.

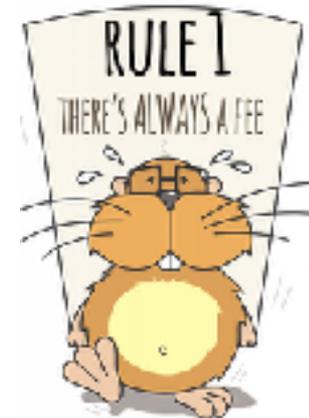
# PARALEGAL

- \* Licensed by LSO
- \* Required to carry Errors and Omissions Insurance
- \* Required Professional Education
- \* Mandatory Continuing Professional Development
- \* Paralegal Rules of Conduct
- \* **Lower Fees**



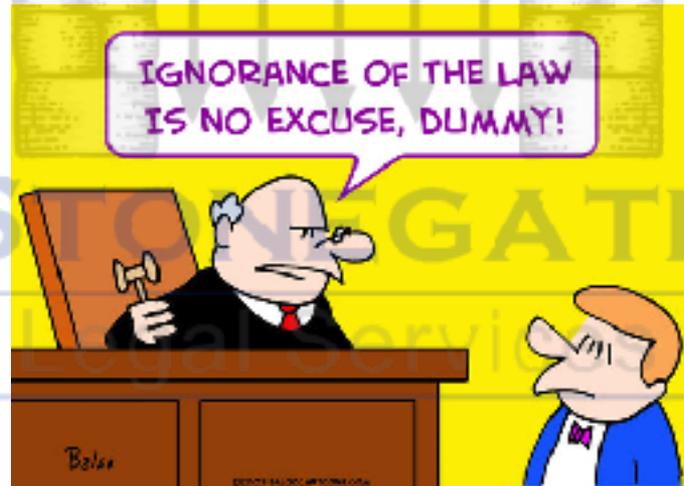
# LAWYER

- \* Licensed by LSO
- \* Required to carry Errors and Omissions Insurance
- \* Required Professional Education
- \* Mandatory Continuing Professional Development
- \* Rules of Professional Conduct
- \* **Higher Fees**



# The Residential Tenancies Act (RTA)

- \* Effective: January 31, 2007
- \* Creates a rental housing system that **protects** tenants, **helps** landlords and **promotes** investment in Ontario's rental housing market.
- \* Legislation affects 1.4 million renters in Ontario

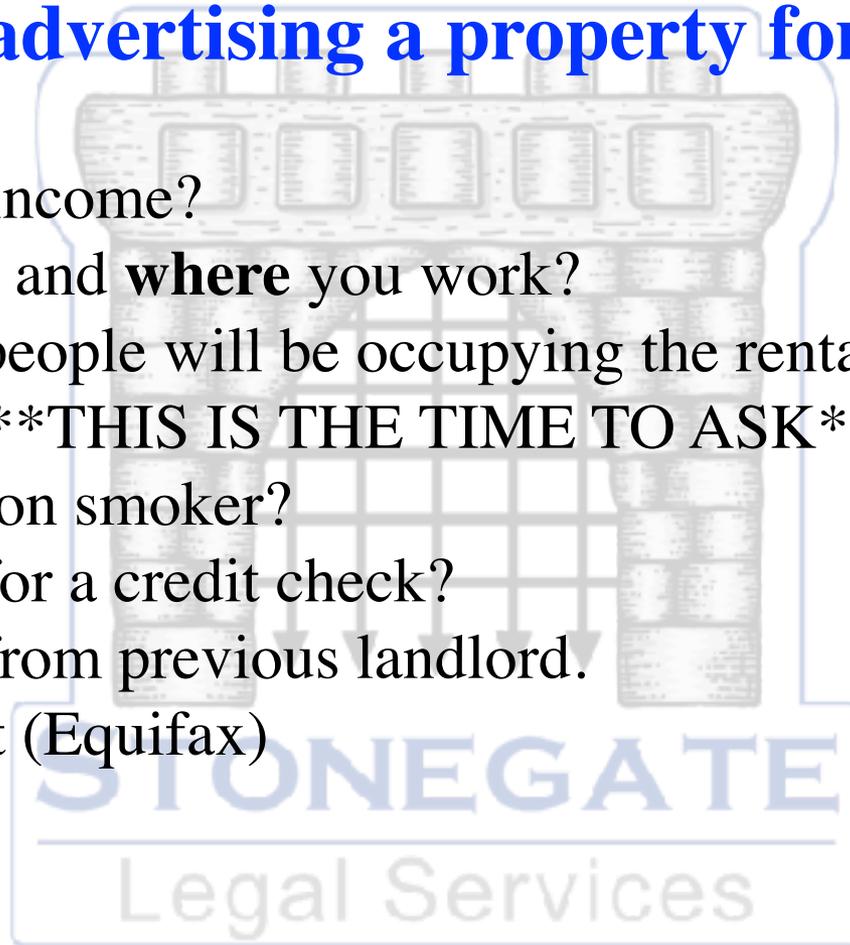


## The Landlord and Tenant Board (LTB)

- \* The LTB resolves disputes between landlords and tenants and either one can apply to the board. It is similar to a court setting.
- \* Disputes can be worked out through mediation or adjudication.
- \* **Mediation**- an LTB mediator helps a landlord and tenant reach an agreement that they are both satisfied with. The outcome is in the control of the parties.
- \* **Adjudication**- a hearing is held. After the hearing, an LTB member makes a decision based on the evidence provided and then issues an order. An order is the final, written version of the member's decision.

# What can realtors ask prospective tenants for when advertising a property for lease?

1. What is the income?
2. **If** you work, and **where** you work?
3. How many people will be occupying the rental unit?
4. Any pets? \*\*\*THIS IS THE TIME TO ASK\*\*\*
5. Smoker or non smoker?
6. Permission for a credit check?
7. References from previous landlord.
8. Credit report (Equifax)



# What can realtors CANNOT ASK when advertising a property for lease on the MLS?

1. If they are pregnant or have children? - Violation of HR
2. If you PLAN on having children or plan to have more children? HR
3. If you are married, single, or divorced (marital status). HR
4. Religion or ethnic background? HR
5. Sexual orientation? HR
6. If on welfare, OW, ODSP, or any public assistance? HR
7. Do you have a disability? HR
8. Age? HR
9. Canadian citizen? HR

If a realtor asks any of these questions, **OR**, won't rent to a prospective tenant **because of the answers**, this could be grounds for discrimination and a Human Rights violation... **and the brokerage and sales representative can be found liable.**

## What **NOT TO INCLUDE** on the MLS listing comments/brokers remarks?

### **1. “Only for basement, tenant must pay 40% of the utilities”**

\*\*\*The legal sharing of utilities is EITHER based on square footage or a split of  $\frac{2}{3}$  or  $\frac{1}{3}$  of the payment.\*\*\*

### **2. “Credit report, employment letter, copy of photo ID required”**

\*\*\*Asking for an employment letter is illegal under the OHRA and prospects are not required to provide a piece of photo ID.\*\*\*

## What **NOT TO INCLUDE** on the MLS listing comments/brokers remarks? Continued

### **3. “Grass cutting and snow removal are the responsibility of the tenant.”**

\*\*\*Municipal safety, housing and maintenance standards states that it is the owner's responsibility to make sure that the property can be safely entered and exited.\*\*\*

\*\*\*The RTA does not address snow removal directly—> it is the landlord's responsibility to make sure that the property is kept in a good state of repair, is fit to live in and complies with health and safety standards. If you file an application to the LTB about snow removal, the member (adjudicator) would decide whose responsibility snow removal is (at their discretion).\*\*\*

# What **NOT TO INCLUDE** on the MLS listing comments/brokers remarks? Continued

## 4. “Tenant to provide post dated cheques”

\*\*\*The landlord **cannot** require the tenant to pay rent by way of post dated cheques, cash, direct deposits, automatic withdrawals... etc.\*\*\*

## 5. “Tenant to provide tenant’s insurance before move in”

\*\*\*Tenant content’s insurance is for the benefit of the tenant and is **NOT** a requirement to a tenancy.\*\*\*

\*\*\*OSL (section 11) allows for the option of insurance, however there is no way to enforce the tenant to obtain insurance.\*\*\*

# Form 400- Agreement to Lease (Residential)

- \* Brokerage requirement to release commissions to realtor.
- \* This is **NOT** a lease agreement.
- \* Form 400- is an OFFER to lease (similar to APS offer)

**OREA** Ontario Real Estate Association  
**Form 400**  
for use in the Province of Ontario

## Agreement to Lease Residential

Toronto  
Real Estate  
Board

This Agreement to Lease (Agreement) dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**TENANT:** \_\_\_\_\_  
(Full legal names of all Tenants)

**LANDLORD:** \_\_\_\_\_  
(Full legal name of Landlord)

**ADDRESS OF LANDLORD:** \_\_\_\_\_  
(Legal address for the purpose of receiving notices)

The Tenant hereby offers to lease from the Landlord the premises as described herein on the terms and subject to the conditions as set out in this Agreement. For the purposes of this Agreement "Tenant" includes lessee and "Landlord" includes lessor.

1. **PREMISES:** Having inspected the premises and provided the present tenant vacates, I/we, the Tenant hereby offer to lease, premises known as:

# The Ontario Standard Lease Agreement

- \* Required to be attached to Form 400 for the brokerage to release commissions.
- \* This is the LEASE AGREEMENT



## Residential Tenancy Agreement (Standard Form of Lease)

### Note

This tenancy agreement (or lease) is required for tenancies entered into on **April 30, 2018 or later**. It does not apply to care homes, sites in mobile home parks and land lease communities, most social housing, certain other special tenancies or co-operative housing (see Part A of General Information).

Residential tenancies in Ontario are governed by the *Residential Tenancies Act, 2006*. This agreement cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

Under the Ontario *Human Rights Code*, everyone has the right to equal treatment in housing without discrimination or harassment.

All sections of this agreement are mandatory and cannot be changed.

### 1. Parties to the Agreement

Residential Tenancy Agreement between:

Landlord(s)

1. Landlord's Legal Name

[Add a Landlord \(+\)](#)

### Note:

See Part B in General Information

# What is the difference between Form 400 (Offer to Lease) and the OSL (Lease Agreement)?

## **OFFER TO LEASE (Form 400)**

- \* Is an offer and the first step to leasing a residential property
- \* May have subject conditions that need to be fulfilled
- \* Signed first

## **ONTARIO STANDARD LEASE (Lease Agreement)**

- \* More detailed
- \* Longer in length than Form 400
- \* Replaces Form 400 when signed

# Ontario's Standard Lease and What Happens If A Copy Is Not Provided To The Tenant?

\* Effective April 30, 2018

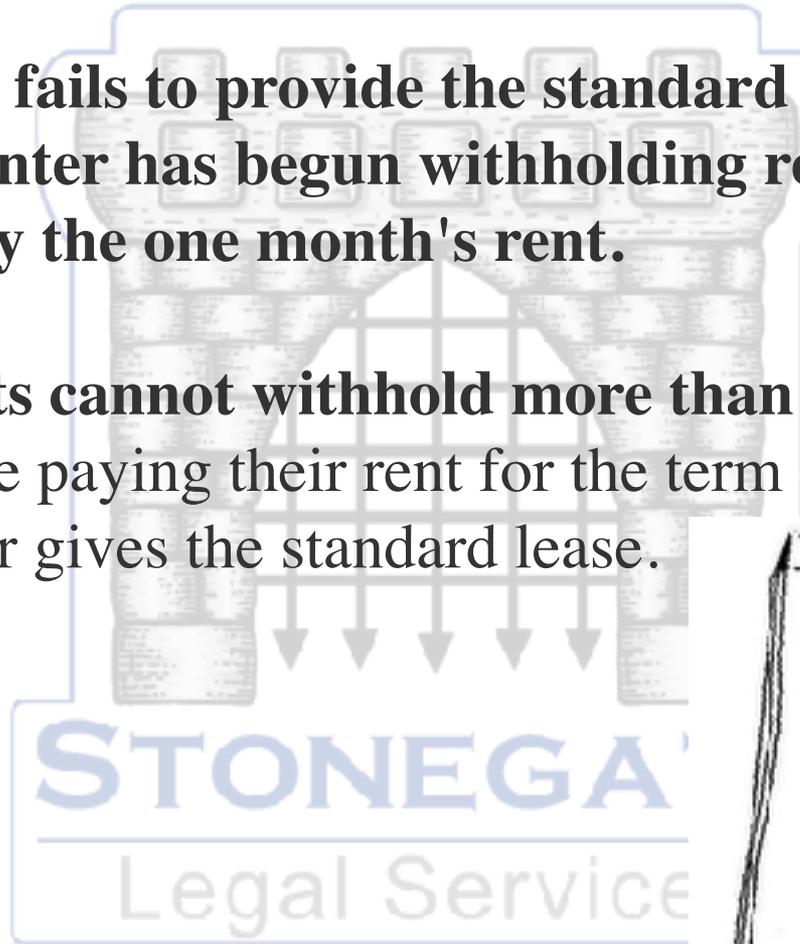
\* The LANDLORD must give the tenant a copy of any written lease within 21 days after the tenant signs it.

*\* The lease should not contain any terms that are inconsistent with the Act. If the lease does contain a term that is inconsistent with the Act, that term will not be enforced by the LTB. (EX- No pets, damage deposits... etc.)*

# Ontario's Standard Lease Continued

\* If the landlord fails to provide the standard lease within 30 days after the renter has begun withholding rent, the renter does not have to repay the one month's rent.

\* **NOTE:** Tenants cannot withhold more than one month's rent and must continue paying their rent for the term of the lease, even if the landlord never gives the standard lease.



Merinda Epstein and Sara Clark 2004

# What else should realtors provide to their clients?

\* Realtors representing landlords must also provide new tenants with information about the rights and responsibilities of landlords and tenants and about the role of the LTB. The landlord **MUST** give this information to the tenant **ON or BEFORE** the start of the tenancy.

\* **Refer to: “Information for New Tenants” - Provide your business card and I will send a copy via email.**

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# Rent Deposits

- \* The landlord can collect a rent deposit from a new tenant on or before the start of a new tenancy.
- \* The deposit cannot be more than one month's rent.
- \* The deposit cannot be used for anything else, **except** for the last months rent.
- \* If a landlord give a Notice of Increase Form (N1), the landlord can also ask the **tenant to increase the rent deposit** by the same amount.

# Illegal Deposits

\* The following deposits are illegal:

1. Damage deposits
2. \*\*\*Key deposits\*\*\*
3. Vehicle deposits
4. Utility deposits
5. Pet deposits
6. Repair deposits
7. Light bulb deposits



**Note: Any other deposit(s) requested other than the last months rent deposit it illegal.**

# Rent Payment Methods and Receipts

- \* The landlord **cannot** require the tenant to pay rent by way of post dated cheques, cash, direct deposits, automatic withdrawals... etc.
- \* The **landlord must provide** a receipt for any rent payment, rent deposit or any other charge upon request by the tenant.
- \* The landlord must provide a **FORMER** tenant a receipt if that person asks for one within 12 months after the end of the tenancy.
- \* The landlord **cannot charge a fee** for providing a receipt.

## Rent Increases: Form N1

- \* The rent can be increased if at least **12 months** have passed since the tenant first moved in OR since the tenants last rent increase.
- \* The landlord must provide **90 days' notice** (in writing) of any rent increase.
- \* Guideline is set every year by the Ontario Government and rental increases must be **as per the guideline**.
- \* Any rent increase **OVER** the guideline must have the LTB approval.

# Common Questions Realtors Ask Before Listing a Property For Sale:

1. Can we evict a tenant to sell a property?
2. The tenant isn't allowing for showings, can we kick them out?
3. The landlords lease is coming to an end, can we give the tenant notice to move out?

# Security of Tenure

All tenants have **SECURITY OF TENURE**, meaning that tenants are **entitled** to occupy the rental unit after the initial term specified in a rental agreement ends.

**A tenancy may be terminated ONLY when:**

- \* The tenant decides to leave and gives notice.
- \* The landlord and tenant agree to terminate tenancy.
- \* The landlord gives notice for a reason permitted under the RTA and the tenant moves out. If the tenant does not move out, the landlord must apply to the board for an order.



# N12 FORM: Notice for Landlord or Purchasers Own Use

When to serve?

- \* **Landlord's own use:** The landlord's immediate family member or caregiver requires the rental unit for their own personal occupation. The person moving in to the unit intends to occupy the rental unit for at least ONE year.
- \* **Purchaser's own use:** The landlord has signed an APS, the property contains 3 units or less, and the purchaser/purchaser's immediate family member or caregiver require the rental unit for their own personal occupation for at least ONE year.
- \* CANNOT issue notice if the landlord is a corporation or for members of the extended family (brother/sister/uncle/aunt).

**\*\*\*REALTORS CANNOT SERVE THIS NOTICE!\*\*\***

## N12 FORM: Good Faith

\* **Good faith** is having the **genuine intention** to occupy the rental unit for residential purposes.

**\*\*\*Landlords SHOULD NOT serve the N12 to a tenant because they are experiencing problems with the tenant, or they want to raise the rent, and believe it is the easiest way to “get rid” of the tenant.\*\*\***

- \* A tenant can file a T5 application against a former landlord for bad faith within 12 months of the date they moved out.
- \* If a landlord is found to have served a notice on bad faith, the LTB can order the former landlord to pay the difference between the new rent and previous rent, moving costs... etc.

**\*\*\*REALTORS CANNOT SERVE THIS NOTICE!\*\*\***

## **N12 FORM: Compensation**

- \* If the landlord serves the N12 **because** the landlord, a member of his/her immediate family or a person who provides or will provide care services to the landlord or his/her immediate family will move in to the rental unit and occupy it for at least one year, compensation equivalent to **ONE MONTH'S RENT** or offering the tenant a unit that is acceptable to them.
- \* Note: The unit offered to the tenant must be owned by the same landlord.
- \* Compensation **MUST** be paid before the termination date.
- \* Declaration or affidavit must be submitted to the LTB.

**\*\*\*REALTORS CANNOT SERVE THIS NOTICE!\*\*\***

# N12 FORM: Important Information On the Form

**Tenant is entitled to compensation or another unit**

If the landlord is giving you this notice for **Reason 1**, then the landlord must:

- Pay you an amount equal to one month's rent by the termination date in this notice, or
- Offer you another rental unit that is acceptable to you.

**A tenant can give 10 days' notice to end the tenancy**

You can terminate the tenancy sooner than the date set out in this notice as long as you give the landlord at least **10 days'** notice that you intend to move out of the rental unit. You must use the Landlord and Tenant Board's Form N9 *Tenant's Notice to End the Tenancy* to give your written notice to the landlord.

**What if you disagree with the notice?**

You do not have to move out if you disagree with what the landlord has put in this notice. However, the landlord can apply to the LTB to evict you. The LTB will schedule a hearing where you can explain why you disagree.

**What if you move out?**

If you move out of the rental unit by the termination date, your tenancy ends on that date.

- \* If the tenant wishes to dispute the notice, they are not obligated to move out of the rental unit and can remain in the unit until the hearing date.
- \* If the tenant decides to leave earlier than the termination date indicated on the N12, then the landlord must provide a refund of any extra rent in his/her possession as well as to provide ONE months compensation.

**\*\*\*REALTORS CANNOT SERVE THIS NOTICE!\*\*\***

# Cancelling the N12

There is no set way to “cancel” an N12 once it is served to the tenant.

Landlords **MUST** make certain that the person whom they have set to move into the rental unit is 100% committed BEFORE serving the N12 to the tenant.

**“Person changed their mind”**: Notify the tenant right away along with a letter explaining the change in circumstance. Inform them that they can disregard the N12 and continue their tenancy.

**“Too late to cancel”**: If the tenant has signed another lease and is moving out, compensation must still be paid and ***IF*** the tenant files an application for “bad faith”, they can sue the landlord for up to \$35,000.

## How can you serve the tenant(s)?

- \* Landlords must serve their tenants according to the rules of the LTB and must fill out a Certificate of Service and file with the notice for a hearing.

The landlord may serve their tenants in one of the following ways:

- \* Handing it to the tenant;
- \* Handing it to another adult in the rental unit;
- \* Placing it in the tenant's mailbox or where mail is usually delivered;
- \* Sliding the document under the door or through a mail slot;
- \* Faxing it to the tenants residence or place of business;
- \* Courier, Registered mail, or Xpress Post;

**NOTE:** If serving via mail, registered mail, XpressPost, you must add 5 days to the termination date.

**\*\*\*REALTORS CANNOT SERVE NOTICES!\*\*\***

# Reasons for Eviction

\* The landlord can give notice to the tenant if the tenant, the tenant's guest or someone who lives in the rental unit is:

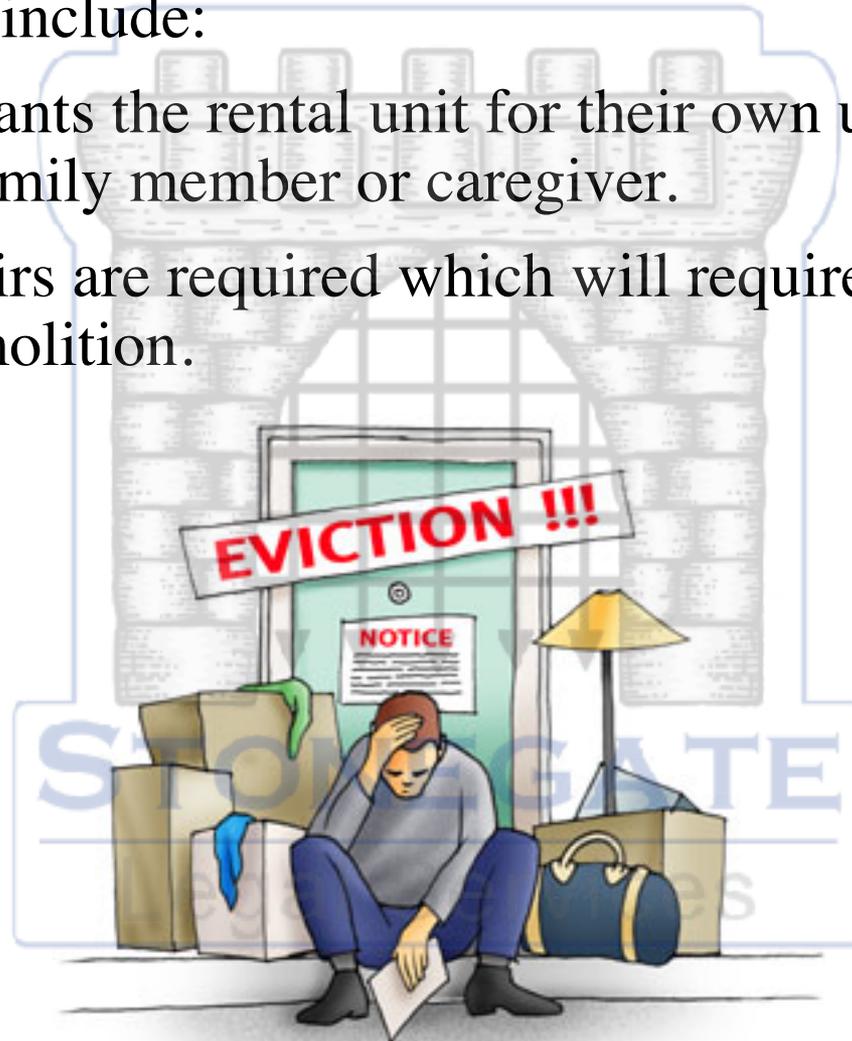
- not paying the rent in full
- persistently late in paying the rent
- causing damage to the property (Ex- pets in hallway)
- committing illegal activities (Ex- selling drugs)
- affecting the safety of others (Ex- dangerous pet)
- disturbing the enjoyment of other tenants or landlord
- allowing too many people live in the rental unit
- not reporting income in subsidized housing



# Other Reasons for Eviction

\* Other reasons include:

- landlord wants the rental unit for their own use or the use of an immediate family member or caregiver.
- major repairs are required which will require building permits and demolition.





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