



# Tenant Bankruptcy

## ***What happens when a tenant declares bankruptcy?***

When a tenant assigns into bankruptcy, the tenant transfers all their assets, called their **estate**, to a **trustee in bankruptcy**. A trustee in bankruptcy is usually an accountant and must be licensed to act as a trustee under the *Bankruptcy and Insolvency Act*. The trustee in bankruptcy is responsible for the administration, liquidation and distribution of the bankrupt tenant's estate to the various creditors. Any legal proceedings or attempts to collect outstanding debts from the bankrupt tenant incurred before the assignment into bankruptcy are stayed, or suspended, until the tenant is discharged from bankruptcy.

## ***Who is a creditor?***

A creditor includes a person to whom a debt is owed by another person. A landlord is considered a creditor when a tenant owes them money, usually unpaid rent. In bankruptcy law there are three types of creditors: secured, preferred, and unsecured.

## ***What is the difference between the three types of creditors?***

1. A **secured creditor** is a creditor whose claims are guaranteed by some security or asset in the bankrupt's estate, (i.e. a mortgagor). The claims of a secured creditor are given the highest priority upon distribution of the bankrupt's estate.
2. A **preferred creditor** is an unsecured creditor whose claims have been given priority by virtue of the *Bankruptcy and Insolvency Act*. Preferred creditors are given secondary priority upon distribution of the bankrupt's estate after the secured creditors' debts have been satisfied. Landlords are preferred creditors for up to three months unpaid rent.
3. An **unsecured creditor** a creditor whose claims are not guaranteed by some security in the bankrupt's estate and may only collect what is owed to them once the claims of the secured and preferred creditors have been satisfied. For any additional rent owing to the date of the tenant's assignment into bankruptcy, the landlord is an unsecured creditor.

## ***How does a landlord become aware of a tenant bankruptcy?***

When a tenant files for assignment into bankruptcy, the trustee in bankruptcy will notify the landlord as a creditor by sending the landlord a notice regarding the first meeting of creditors if one is to be held, or a notice that there will be no meeting of creditors unless a creditor requests one.

The landlord is required to file with the trustee in bankruptcy a *Proof of Claim*. The landlord must calculate the arrears owing to the date of the assignment into bankruptcy. The landlord may identify their claim as a preferred creditor for up to three months of unpaid rent to the date of the assignment into bankruptcy and as a unsecured creditor for any remaining unpaid rent. If a first meeting of creditors is to be held, the landlord may attend. The trustee in bankruptcy will then liquidate the bankrupt tenants assets and pay the creditors in order of their ranking, in accordance with the *Bankruptcy and Insolvency Act*.

## ***What happens if a landlord has served a notice to terminate a tenancy for non-payment of rent and the tenant assigns into bankruptcy?***

When a tenant files for assignment into bankruptcy, their trustee in bankruptcy becomes the tenant along with the actual tenant to the date of the assignment into bankruptcy. Once the landlord becomes aware that the tenant has been assigned into bankruptcy, the landlord should amend the notice for non-payment of rent to include the trustee in bankruptcy as a party. The word "AMENDED" should be written at the top of each page of the notice and the termination dates should be changed. The trustee in bankruptcy should be served the amended notice at their place of business. The tenant must also be served.

If an application has already been filed with the Landlord and Tenant Board the landlord must amend the application to include the tenant's trustee in bankruptcy as a party. The trustee in bankruptcy should be served the *Notice of Hearing* at their place of business. The tenant should also be served.

The landlord and the tenant may attend the hearing as scheduled however the Landlord and Tenant Board does not have jurisdiction over arrears of rent when a tenant assigns into bankruptcy. A tenant's arrears of rent before their assignment into bankruptcy is a claim **provable in bankruptcy** and therefore falls under the jurisdiction of the **Bankruptcy Court**. In civil law, there cannot be more than one proceeding for the same claim therefore the Board is unable to make any determinations regarding the tenant's arrears of rent. The effect of the tenant's assignment into bankruptcy is that the landlord's application to the Board to terminate the tenancy and collect the rent arrears is stayed, or suspended, until the tenant is discharged from bankruptcy.

***What happens when a tenant has filed for assignment into bankruptcy and has breached a mediated settlement?***

When a tenant files for assignment into bankruptcy after entering into a mediated settlement with the landlord at the Landlord and Tenant Board for an application to terminate a tenancy and collect the money the tenant owes and the tenant breaches the mediated agreement, the landlord may re-open the application or file an *ex parte* application as permitted under the mediated settlement. However, a landlord may only request termination of the tenancy; any request to have the tenant pay what they owe will result in a stay of the application as the arrears of rent is a claim provable in bankruptcy and outside the jurisdiction of the Board.

***What happens to rent paid after the tenant files for assignment into bankruptcy?***

When a tenant pays rent after assignment into bankruptcy, the tenant may direct where those payments should be applied. Payments made by the tenant after their assignment into bankruptcy will generally be applied to the current rent owing unless the tenant or the trustee in bankruptcy expressly instructs the landlord to apply the payment to the rent arrears.

***What can a landlord do if a tenant fails to pay the current rent after the tenant has filed for assignment into bankruptcy?***

A tenant who has filed for assignment into bankruptcy continues to be responsible to pay the current rent. If a tenant fails to pay the current rent after their assignment into bankruptcy, the landlord may serve a new notice for non-payment of rent for rent arrears incurred after the date the assignment into bankruptcy was made.

The **Residential Tenancies Act Fact Sheets** are intended to help landlords develop a better understand their rights and responsibilities. This publication is not intended as legal advice but rather as general information.

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