



# Quarterly News

## Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023

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#### Landlord's Self-Help Centre

15<sup>th</sup> FL- 55 University Ave  
Toronto, ON, M5J 2H7

Tel: 416-504-5190  
Toll free: 1-800-730-3218  
[info@landlordselfhelp.com](mailto:info@landlordselfhelp.com)

#### Disclaimer

The material contained in this publication is intended for information purposes only, it is not legal advice.

Legal Aid Ontario provides core funding to Landlord's Self-Help Centre.

The views expressed here are those of the clinic and do not necessarily reflect those of Legal Aid Ontario.



On June 8<sup>th</sup>, 2023 [Bill 97, Helping Homebuyers, Protecting Tenants Act](#), received Royal Assent. Bill 97 is the latest in a series of steps the Ontario government is taking to increase housing supply and help more Ontarians find a home they can afford. Schedule 7 of the Bill proposes several changes to the *Residential Tenancies Act, 2006*.

### Schedule 7 of Bill 97 proposes the following changes to the RTA:

**Air conditioner-** The government is proposing changes that are intended to clarify and enhance the rules surrounding the use of A/C units and their installation by tenants. Section 36.1, would be added permitting tenants to install and use a window or portable air conditioner in a rental unit for which the landlord does not supply air conditioning. This is subject to specified exceptions and conditions such as the tenant providing notice to the landlord, the air conditioner being installed safely and securely, and the installation of the air conditioner not being prohibited by any applicable law. Currently under the RTA, landlords and tenants can agree to the installation of A/C units in exchange for a seasonal rent increase. In practice, some landlords may prohibit the installation of an A/C unit in their tenancy agreement, however the RTA does not set out grounds for this prohibition.

**Increase in Maximum Fines-** The government is proposing changes to section 238 of the *Residential Tenancies Act, 2006* to double maximum fines for offences from \$50,000 to \$100,000 for individuals and from \$250,000 to \$500,000 for corporations.

**Standard Form of Rent Repayment Agreement-** Bill 97 is proposing to amend the RTA to make the use of a mandatory form approved by the Landlord and Tenant Board for repayment agreements made under section 206 of the RTA.

**Help Protect Tenants from Bad Faith Renovation Evictions-** Currently under section 53, the RTA does not require landlords to provide tenants with information regarding status of extensive renovations/repairs and completion date. The RTA also does not require landlords to give tenants a 'grace period' to re-occupy the unit once these renovations/repairs are completed. The RTA would be amended to require landlords to:

- provide tenants with written notifications about the status of renovations/repairs, including estimated completion date and any changes to this date, as well as a final notification, once the renovations/repairs are completed stating when the unit will be ready for re-occupancy;
- provide tenants with a grace period of at least 60 days after the day the rental unit is ready for occupancy for the tenant to move back in. This will enable the tenant to provide the required 60-day notice to end their tenancy in their temporary accommodation, if they are renting elsewhere while renovations/repairs are completed; and
- obtain and provide, along with the eviction notice, a report from a qualified person stating the renovations/repairs are so extensive they require the rental unit to be vacant.

Continued on next page

## ***Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023*** *Continued*

Section 57.1 is amended to provide that a failure to comply with the notice requirements is deemed to constitute a failure to have afforded a right of first refusal for the purposes of subsection 57.1 (1) (former tenant's application, failure to afford tenant right of first refusal). Section 57.1 is amended to change the time limit applicable to the making of an application under subsection 57.1 (1).

**N12 Notice of Termination Given in Bad Faith-** Bill 97 is proposing to amend the RTA to provide the Minister of Municipal Affairs and Housing with the authority to set, in regulation, a timeframe within which a landlord (or their family member or caregiver etc.) must occupy the unit for personal use. If this timeframe elapses, the landlord would be presumed to have acted in bad faith if an application is made by the tenant to the LTB for a remedy.

For additional information on amendments to the RTA see schedule 7 of Bill 97 at <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-97>

### ***“Administrative Justice Delayed, Fairness Denied”***

On May 4, 2023, Ontario Ombudsman released a report titled “Administrative Justice Delayed, Fairness Denied”, which was prepared following the conclusion of an investigation into the Landlord and Tenant Board delays. As cited in the report, the purpose of this investigation was to determine whether the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board are taking adequate steps to address the delays and case backlogs at the Landlord and Tenant Board (“LTB”).

The Ontario Ombudsman is an independent office that assists in investigating and/or resolving complaints made by the public about services which are provided by the Ontario public sector agencies. The Ontario Ombudsman received an influx of complaints about the LTB, specifically about the delays of the Board. As time went on, the Ombudsman received various complaints, surrounding other issues aside from the delays of the LTB. This influx led the Ombudsman to launch an investigation, which commenced in January 2020.

This article will summarize some of the LTB issues that were investigated. In total, the Ombudsman proposed 61 recommendations for the LTB to implement in order to assist in resolving the public's complaints.

#### **Shortage of Board Members**

As mentioned before, one of the main complaints centered on the delays of the LTB. In October 2019, the Board attributed their delays to shortage of Board Members. During this time, there were about 19,000 applications that were pending, however, by April 2020 the backlog of active applications totalled to 30,440 and the reason for delays shifted as a result of the COVID-19 pandemic.

#### **Volume of Applications**

The LTB is the busiest tribunal in Ontario. To put this into perspective, in the fiscal year of 2018-2019, the LTB received more than 82,000 applications, and almost 81,000 in 2020-2021. In order to avoid any backlog, the LTB would need to resolve more than 300 applications per working day which is not realistic as the LTB does not have enough members to conduct hearings, issue orders, etc. Further, shortage of members may be attributed to the delay in appointment of members, which all contributes to the overall delays of the LTB.

#### **Outdated Technology**

The Ombudsman discovered that the system the LTB was using was contributing to the delays. Specifically, in July and August 2019 there was a technical issue with the calendar function which prevented the LTB from processing applications at full capacity. Another issue was that there was no way to flag which matters were to be expedited for a hearing. The example from the report states that if an expedited matter had to be adjourned, there was no way to track that matter to ensure it is expedited. In an attempt to rectify these technological issues, a new case management system was implemented. On July 2, 2021, the first part was launched publicly and was labeled “Navigate Tribunals Ontario”. As of December 2021, the Tribunals Ontario Portal was introduced, and the LTB is continuing to implement new features through this online system.

#### **Process from Applications to Issuing Orders**

The LTB has different process steps which are involved when it comes to processing applications. Through this

## ***“Administrative Justice Delayed, Fairness Denied”*** *Continued*

investigation, it was discovered that there are several areas where the LTB could improve upon, which are listed and briefly described below:

### Receipt and Screening of Applications

The LTB can receive applications by email, mail, in person at Service Ontario, or through the Tribunals Ontario Portal. The majority of applications are filed and processed from the date they are received. Despite the LTB’s service standards that an application is to be entered into their system within three business days, there is an issue with applications that are being filed by mail, email or in person as the processing time is a lot longer. As of February 7, 2023, more than 700 applications that were submitted via mail, in person or email were still in queue to be uploaded to the portal.

The LTB’s website states that their staff checks applications and supporting documentation to ensure they are filed on time. However, the LTB officials stated that there is no detailed screening of applications to ensure there are no fatal errors. Fatal errors was another topic of complaint investigated by the Ombudsman. The complaints were centred on having to wait months for a hearing, only to have the matter dismissed due to their applications containing fatal errors. In the report, there was a recommendation made for the LTB to have a consistent screening process to identify these issues prior to processing the applications to avoid the applications getting dismissed.

### Scheduling Hearings

The timeframe that the LTB had set to deal with evictions based on nonpayment of rent was within 25 days from receiving the application. The report concludes that no application in the fiscal year of 2020-2021 was scheduled within this timeframe. The LTB is continuously working to resolve this immense scheduling backlog and the Executive Chair of Tribunals Ontario advised that in the fall of 2022, a pilot project would be introduced to permit for hearings to be scheduled on weekends and statutory holidays. The LTB has also introduced a “self-scheduling” feature for certain applications which can be found on the Tribunals Ontario Portal.

### Issuance of the Notice of Hearing

The pandemic caused a delay when it came to issuing notices of hearing. Recently the notices of hearing have become system-generated, which was a change from having them generated manually. Provided that parties give consent to receive notices by email on the portal, they will be emailed a copy of the Notice of Hearing. Since 2020, there have been complaints that individuals are not in receipt of the notice of hearing, or that they were in receipt of it too close to the hearing date. Upon investigating, it was recommended for the LTB to have a set notice period between the issuance of the hearing notice and the date of the hearing to keep this consistent.

### Adjournments and Rescheduling

Adjournments can happen for a few reasons. A common reason was due to the member running out of time to finish the hearing. Prior to March 2020, the members were able to expedite matters that were to be adjourned. When the LTB shifted from in-person to virtual hearings, this process changed, which resulted in matters being sent back to the general queue when they only needed to be adjourned. This inevitably resulted in delay and frustration for the parties. The recommendation, as mentioned in the report, is for the LTB to configure a new case management system to track adjournments, reasons for the adjournments and any instructions a member has made on an adjournment.

### Order Preparation and Issuance

The Ombudsman received many complaints that parties have waited months after a hearing to receive their Order. Before the pandemic, the LTB would issue orders within 10 business days, with the exception of certain applications which were subject to a standard 20-day order. For years, the LTB was in compliance with this timeline. There were a few reasons that contributed to this delay such as an increase in applications, a decrease of members’ available, a shift to remote hearings, and outdated technology, etc. As a result of the Ombudsman’s investigation, it is recommended that the LTB should designate staff members to track the membership assigned to orders and implement a case management system that allows monitoring of outstanding orders and to be able to track orders.

**To read the complete report, visit:**

<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2023/administrative-justice-delayed,-fairness-denied>

# Self-Help TIPS

In this issue of the Self-Help Tips we will discuss the legal reasons to serve the form N5: Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding on a tenant and supporting documents needed.

An N5 notice can be used by a landlord for the following reasons:

**Reason 1:** The tenant, the tenant's guest or another occupant of the rental unit substantially interfered with another tenant's or your,

- reasonable enjoyment of the residential complex, or
- interfered with another lawful right, privilege or interest of the landlord or other tenants.

For example: A landlord can serve an N5 notice to a tenant for unpaid utility bills for interfering with the landlord's lawful rights or interests. It is important to note, however, that as of September 1, 2021, a landlord could also request the Landlord and Tenant Board (LTB) to award the actual cost of these utility bills. You must ensure that all the charges claimed as outstanding are clearly supported by invoices generated from the utility company. Copies of the utility bills **MUST** be included with the N5 notice to the tenant and subsequently filed with L2 application at the LTB.

**Reason 2:** The tenant, the tenant's guest or another occupant of the rental unit wilfully or negligently damaged the rental unit or the residential complex.

*A copy of the quote for the damage may be attached to the N5 notice when serving to the tenant.*

**Reason 3:** The number of people living in the rental unit is more than permitted by health, safety or property standards.

If you are serving this notice for an overcrowding issue, provide a copy of the bylaw or regulation with your notice to the tenant. Be sure to direct that the tenant reduce the number of people living in the unit in accordance with stipulated standards in order to correct the problem. Giving this notice is the first step in evicting a tenant for the above reasons.

**Note:** If the landlord lives in the same building as the tenant and the building has three or fewer residential units you may give the tenant a **form N7 -Notice to End a Tenancy for Causing Serious Problems in the Unit or Residential Complex** for reason 1 above instead of a Form N5. A form N7 can also be given based on damages if you believe you can prove the damage was caused deliberately (this is difficult to prove). The form N7 cannot be voided and it has a shorter notice period.

**Dates on the N5** - If this is the first N5 notice served to the tenant in the past 6 months, the termination date on the N5 must be at least **20 days** after the notice is given to the tenant. Once the tenant is served with the N5, the tenant has 7 days to correct the behavior or move out by the termination date. If the tenant does not stop the activities or correct the behaviour described within 7 days of being given the N5, then, starting on the 8th day, you can file an L2 application with the Landlord and Tenant Board (LTB) to evict the tenant. An N5 notice **expires 30 days** after the termination date indicated on the notice.

If this is the **second N5** notice given to the tenant in the past 6 months, the tenant cannot void this notice and you can apply to the LTB to terminate the tenancy and evict the tenant as soon as the notice is given to the tenant. The termination date for the second N5 must be at least **14 days** after the notice is given.

## TIPS

- When serving an N5 Notice of Termination for reason 1 (interference), it is important to be specific. Include as much dates, times and details as possible. Don't limit yourself to the 3 row section provided on the "details" section of the N5, add separate pages on a dully labeled word document, properly laying out all occurrences.
- Have witnesses whose complaints or experiences form all or part of the notice? Include their recollection in the notice; just be sure to advise them that the application for eviction would be stronger if they were to appear as witnesses at the hearing.
- When serving an N5 notice for damages be sure to have the following:
  - Before and after photos of the damaged property
  - At least 3 detailed quotes/estimates of the what it would cost to repair or replace the damaged property
- Please consult with a legal representative before serving the N5 as it is a legal document that must be completed correctly to avoid any delays or dismissal of your application.

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## ***Did You Know?***

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***Q: My tenant has just moved out without providing proper notice and breaking his one year lease. How can I proceed now to recover the rent that he owes to the end of the lease as I am now left with an empty unit?***

The first thing that you have to be aware of is that even though the tenant did not give proper notice, it is now up to you to mitigate your losses and make an effort to re-rent the unit as soon as possible. Once you have re-rented the unit, you may claim your loss of rent by filing an application to the Landlord and Tenant Board (Form L10) for an Order that the former tenant must pay you for your rent losses as a result of their breach.

***Q: I entered into a lease agreement with a tenant and his mother agreed to be a guarantor, but I'm not clear whether the guarantor has to be named on the lease. Can you explain how this should be done?***

A guarantor is a person that guarantees the rent on behalf of the tenant. The guarantor should not be named as a tenant on the rental agreement since the guarantor does not have the right to occupy the rental unit within the meaning of the *Residential Tenancies Act*. Both parties should sign a guarantor agreement and attach it to the lease.

***Q: I served my tenant with the Form N12 as I will be moving in to the property. I understand that I have to pay the tenant compensation of one month's rent. The tenant is telling me that he will not move out according to my notice. Can I then refuse to pay the compensation?***

No, you cannot refuse to pay the compensation, and in fact you must make sure to provide it to the tenant by the termination date whether the tenant moves out or not. Failure to provide the compensation would result in the Landlord and Tenant Board dismissing the case and you would need to re-start the process from the beginning.

***Q: Our tenant of many years has brought in a new roommate. The tenant is the sole person currently on the lease. The new roommate is now demanding to be on the lease as well.***

***Am I obligated to put him on the lease?***

The tenant is allowed to have roommates, however you are not under any obligation to put the roommate on the lease as long as you don't accept any rent from the roommate.

***Q: I recently had a water problem in one of my units, and I had the repairs done as soon as possible, but unfortunately the tenant had to be out of the unit for a couple of days while the work was being done. The tenant is now claiming that she is entitled to a rent abatement for the inconvenience and if I don't give it to her she will either deduct it from the rent or file an application with the LTB. Can she do this? What does a rent abatement mean?***

The tenant is not allowed to withhold rent no matter the circumstances. The proper procedure is for the tenant to file an application with the LTB for an abatement of rent which is a monetary award to the tenant based on the landlord's failure to fulfill his maintenance obligations under the law. If the landlord is found to have breached his maintenance obligations, the LTB can order that the landlord give back part of the rent paid or the tenant can deduct a certain amount from the rent. The adjudicator determines the amount of the abatement based on how long the problem existed, its severity and how it affected the tenant.

***Q: After a long process at the LTB I finally obtained an Order for the tenant to vacate the property. I filed with the Sheriff to carry out the eviction. However, the tenant seems to have moved out; he has been seen moving out belongings but he still has not returned the keys to me and apparently he's still coming to the unit. Based on the history of this tenant I doubt that he will return the keys. Can I just change the locks now rather than wait for the Sheriff and incur more costs?***

If you're not certain that the tenant has completely moved out of the unit and the keys have not been returned to you, it is not advisable to change the locks without the Sheriff being present. The tenant could still claim that he was still in possession of the rental unit and would only leave with the Sheriff present.

## LTB Updates

- **Self-Scheduling:** The Landlord and Tenant Board has launched the self-scheduling feature to allow landlords that submitted L1 and L9 applications to schedule a hearing date. Landlords will receive an email informing them that their L1 or L9 file has been enabled for self-scheduling through the Tribunals Ontario Portal. It is important to choose the date carefully and this cannot be changed unless a Request to Reschedule the hearing is submitted and approved.
- Tribunals Ontario has launched their **Mobile Access Terminal Service available in Toronto, Hamilton, London, Ottawa and Sudbury.** Based on approved accommodation requests, a suitable venue and required equipment will be provided, including a laptop and internet connection. Technical support will also be provided on the day of the LTB hearing to help landlords and tenants with basic technology issues or questions.
- The Landlord and Tenant Board has launched a **virtual hearing technical support line** for troubleshooting technical issues landlords and tenants may face while joining their hearing through the online platform Zoom. **On the day of the hearing, you can email [LTBHearingSupport@ontario.ca](mailto:LTBHearingSupport@ontario.ca), or call 416-212-9064 (toll-free 866-769-7865).** For more information on how to use the virtual hearing technical support line, review the Zoom Technical Support section at <https://tribunalsontario.ca/ltb/contact/>
- Starting July 10, 2023, the Landlord and Tenant Board is consolidating their regional email addresses into one main email address. Landlords and Tenants can use **[LTB@ontario.ca](mailto:LTB@ontario.ca)** to contact the LTB. Emails sent to the regional email addresses on or after July 10, 2023, will receive an email bounce-back advising them that their email has not been received by the LTB and directing them to resend their email to **[LTB@ontario.ca](mailto:LTB@ontario.ca)**.

For more information, please visit the Landlord and Tenant Board at <https://tribunalsontario.ca/ltb/>

## Landlord Lunch & Learn Series!!!

If you did not have an opportunity to attend our Landlord Lunch & Learn Series, you can now watch the replays here <https://landlordselfhelp.com/LunchAndLearn/>

## LSHC Appointments

Please be advised that the Landlord's Self-Help Centre offers appointments in person or through the online platform Zoom. If you need an appointment, please email us at [info@landlordselfhelp.com](mailto:info@landlordselfhelp.com), or call us at 416-504-5190 or Toll-Free at 1-800-730-3218. Please note that the last appointment each day will be scheduled a half hour before closing (at the latest).

## *LSHC Upcoming Holiday Closures!*

Please be advised that our office is closed on the following dates:

**July 3<sup>rd</sup> for Canada Day-** Our regular business hours resume on Tuesday, July 4<sup>th</sup> at 9:00am.

**August 7<sup>th</sup> for the Civic Holiday-** Our regular business hours resume on Tuesday, August 8<sup>th</sup> at 9:00am.

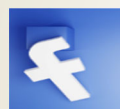
**September 4<sup>th</sup> for the Labour Day weekend-** Our regular business hours resume on Tuesday, September 5<sup>th</sup> at 9:00am.

## *LSHC's 2023 Annual General Meeting and Landlord Learning Forum*

*Save the date!*

The Landlord's Self-Help Centre's 2023 Annual General Meeting and Landlord Learning Forum will be held on Wednesday, October 11<sup>th</sup>, 2023. Details to follow soon!

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