



# Quarterly News

## LTB Delays Causing Negative Cash Flow?

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### 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.*



It is no secret that landlords continue to face significant delays at the Landlord and Tenant Board (LTB). It currently takes a landlord approximately 6-8 months, from time of filing, to receiving a scheduled hearing for an application. During this waiting process, and should a tenant continue not to pay rent, a landlord is left with the burden of “figuring it out”, be it with utility payments, mortgage, property taxes or other operating expenses. Many landlords use this additional, anticipated, rent to supplement their income, therefore, any such disruption not only creates financial stress, but can also be detrimental to one’s livelihood.

Here are some ways that you can create additional income to narrow the gap and lessen any cash flow deficit:

### 1. Make use of unused space to create additional rental unit and generate new income source

Some residences may have an unfinished basement or garage. If this was not a part of the lease agreement between you and the current tenant, you can make use of this space by converting it into a single family dwelling or rooms to be rented out individually as permitted by municipal bylaws. Live in a condo building or townhouse complex? Have an extra parking space? Try renting it out to a neighbor for a monthly fee. Just be sure to form an agreement for this parking space.

### 2. Switch your mortgage from variable interest to fixed interest rate

Now that variable rates are as high as, if not higher than, fixed mortgage rates, it may be a good time to examine this option. By switching your mortgage from a variable interest rate to a fixed rate, you can enjoy the peace of mind knowing that you have a set interest rate and that you can predict your monthly interest and principle payments. Also, knowing what your monthly payments are, allows you to budget accordingly and reduce financial uncertainty. A fixed rate mortgage also allows you the opportunity to predict exactly when your mortgage may be paid off so you can plan for your future accordingly.

### 3. Refinance your mortgage or get a HELOC

Another resource for landlords to “stop the bleed” would be through talking to your financial institution about refinancing the mortgage on your rental property or getting a Home Equity Line of Credit (HELOC). With interest rates at an all-time high, many may be hesitant to refinance their mortgage, however, refinancing your mortgage can provide access to equity in the rental property that can, in turn, be used to offset any negative cash flow until your matter is resolved at the LTB.

*To read the long version of this article, visit our website.*

# Vehicle Left Behind By Your Tenant?

Once a landlord has gone through the legal process at the Landlord and Tenant Board to evict a tenant, and is successful, the landlord will obtain an eviction order. This eviction order can then be enforced by the Sheriff's office (Court Enforcement Office). The purpose of the Sheriff's office is to allow landlords to recover possession of the rental unit by legally evicting the tenant. The tenant has 72 hours after the enforcement of the order to pick up their belongings from the rental unit. To be clear, according to section 41 (3) of the *Residential Tenancies Act (RTA)*, "A landlord shall make an evicted tenant's property available to be retrieved at a location close to the rental unit during the prescribed hours within the 72 hours after the enforcement of an eviction order."

Based on our experience at the Landlord's Self-Help Centre, most tenants pick up their belongings within the 72 hour period after being evicted by the Sheriff's office. However, there are certain situations where tenants leave their vehicles at the rental property and landlords are unsure as to how to legally deal with an abandoned vehicle.

Disposing of an abandoned vehicle follows a different legal process from just being able to dispose of the tenant's belongings such as furniture, kitchenware or clothing because owning a vehicle requires having legal ownership. This is where the disposal of a vehicle becomes difficult as the landlord does not have legal ownership. To avoid having to go through the process of transferring the ownership of a vehicle in order to dispose of it, landlords should try their best to motivate their tenants to pick up their cars. If this does not work, landlords need to then follow the legal process of transferring the ownership of the vehicle to themselves.

Once the 72 hour period has elapsed and the tenants have not returned to pick up their vehicle, the landlord should start the following process:

First, the landlord needs to ensure that his eviction order issued by the Landlord and Tenant Board requires the tenant to pay an amount. This could be for arrears, damages or compensation. The landlord then needs to write a *letter of intention to dispose of the vehicle* as per section 42 of the RTA, and send it by registered mail to the last known address of the tenant, which in most cases will be the address of your rental unit where the tenant was evicted from. The letter must indicate that the tenant has a period of 30 days to pick up the vehicle and that the landlord will take possession of it after that period has ended.

Once the letter has been mailed and the 30 day period has ended, the landlord has to submit the following:

- ✓ a copy of the *letter of intention to dispose of the vehicle*
- ✓ a copy of the eviction order showing money is owed by the tenant
- ✓ vehicle information such as Vehicle Identification Number (VIN), and license plates
- ✓ an affidavit (consult with a legal representative about preparing this)
- ✓ a copy of section 42 of the RTA; and,
- ✓ a *Sworn Statement for Transfer of a Used Vehicle*.

All these documents have to be taken to your nearest Service Ontario so they can transfer the ownership of the vehicle to the landlord.

**Please remember that every situation may be different and unique, so it is best to obtain legal advice on this process before proceeding.**

To contact the Ministry of Transportation, visit <https://www.ontario.ca/feedback/contact-us?id=26938&nid=97174>

## Self-Help TIPS

In this issue of the Self-Help Tips we will discuss the rules a landlord must follow when assuming a rental unit has been abandoned by the tenant.

There is a considerable risk in re-renting a rental unit unless it is clear that the tenant has vacated and does not wish to continue the tenancy. **Subsection 79** of the Residential Tenancies Act states: “*If a landlord believes that a tenant has abandoned a rental unit, the landlord may apply to the Board for an order terminating the tenancy*”. In this edition of the Self-Help Tips we will focus on when a rental unit should be considered abandoned.

**Interpretation Guideline 4- Abandonment of a Rental Unit** outlines factors that will assist a landlord in determining whether a unit should be considered abandoned. Guideline 4 states that, “*although section 79 explains how the landlord may receive an order terminating the tenancy in cases where the tenant has abandoned the unit, it is not mandatory for this type of order to be issued for the landlord to treat the unit as abandoned.*”

### Indications of Abandonment

- The tenant is in arrears. Note - **Section 2(3) of the RTA** states that a rental unit is not considered abandoned where the tenant is not in arrears of rent.
- The tenant has told the landlord or another tenant that they were moving out.
- Other tenants or neighbours have seen a moving truck or the tenant in the process of moving.
- The tenant has called the utility companies to switch the utilities.
- The rental unit door is left open revealing that the unit is empty or the landlord serviced a 24 hour notice of entry and the unit is empty.
- Mail has not been collected by the tenant for several weeks.
- Other tenants and/or neighbours haven't seen the tenant at the rental unit for some time.

### Abandoned Belongings

If the tenant has abandoned the rental unit and has left belongings behind the landlord may dispose of the tenant's property found in the unit in accordance with Subsection 42(1) if,

- (a) The landlord obtains an order terminating the tenancy under Section 79; or
- (b) The landlord gives notice to the tenant of the rental unit and to the Board of the landlord's intention to dispose of the property.

If either of these conditions has been met, the landlord may immediately dispose of anything unsafe or unhygienic and, after 30 days following the issuance of the order or the giving of the notice, the landlord may sell, retain for the landlord's own use or dispose of any of the tenant's belongings.

### Tenant's Claim to Belongings

If the tenant does return to claim his/her belongings within the **30 day period**, they must pay the landlord any arrears of rent and any reasonable costs of moving, storing and securing the property.

The tenant has **six months** from the date of the Order or from the giving of the 30 day notice to claim the proceeds of the sale, if the landlord sells the belongings. The Landlord can deduct from the proceeds of the sale any arrears of rent and any reasonable costs incurred in the moving, storing, securing or selling of the property.

## TIPS

- Before entering the rental unit to determine if the tenant has abandoned, do not enter unless you first serve the tenant with a 24 hour written notice to enter the unit to perform an inspection by posting the notice on the door.
- Upon entering the rental unit have a witness with you, take pictures and keep an itemized list of all the belongings the tenant has left behind.
- The landlord should make reasonable efforts to contact the tenant to determine if they have left the unit and document the efforts made with time and dates.
- When in doubt file the L2 application under s.79 of the Act and have the Board determine if the unit has been abandoned.
- Altering the locks to a rental unit during the tenant's occupancy without giving the tenant replacement keys is an offence under the RTA and if you are found guilty you can be fined up to \$50,000.

# Renting to Students

Are you renting to students? If so, you are definitely not alone, as it is common for landlords to rent their property out to students. However, renting to students may also come with some challenges.

When renting to students, you may be inclined to have the students sign a lease agreement for the duration of their studies for that particular school year, rather than entering into a yearly lease. For example, you may enter into a rental agreement with a student for the period of September to April, rather than from September to August. In doing so, you should be prepared that if the student does not leave at the end of the school year or term of the lease, the lease agreement will automatically turn into a month to month tenancy. Just because the school year has ended, does not mean that the student needs to vacate the rental unit. A tenant who is a student has the same tenancy rights as any other tenant, and does not need to leave at the end of the lease agreement. The *Residential Tenancies Act* (“RTA”) does not provide the Landlord with a remedy if the student does not leave at the end of the lease and/or when their semester end.

## Security of Tenure

It is important for landlords to realize that the RTA provides tenants with Security of Tenure. Security of Tenure does not permit for a landlord to end the tenancy unless they have a reason permitting them to do so, as defined by the RTA. If you would like further details regarding Security of Tenure, you may look at Part V of the RTA, at the link listed below: [www.ontario.ca/laws/statute/06r17#BK45](http://www.ontario.ca/laws/statute/06r17#BK45)

## Joint Tenancy

When renting to students, you may feel inclined to list all of the students on one lease agreement. This may be common if it is a group of students who all know each other, or who are all in the same program. The landlord should be aware that when all of the tenants are listed on one lease agreement, this will result in a joint tenancy. In a joint tenancy, all of the tenants are jointly and severally liable for payment of the entire rent of the rental unit. This means that if one tenant stops paying their portion of the rent, the other tenants are still responsible for the total rent amount owing, despite any arrangements the tenants may have made. In addition, if there are any issues with any of the tenants that are part of the joint tenancy, you cannot terminate the tenancy with only one of the tenants, as they are all on the same lease. You would have to commence a legal proceeding against all tenants listed in the same lease agreement, which could result in a very complicated situation for all parties involved.

Another option is to enter into separate leases with each of the students and to avoid joint tenancy agreements. That way, if an issue arises with only one tenant, the process to serve them with a notice and to resolve the dispute will be easier, as no other tenant is on that lease. When drafting separate lease agreements, it is important to include the room number, to clearly identify what room that student is renting out.

***Please be cautious that every situation is different and can come with its own challenges. It is important to seek legal advice before proceeding, to ensure that you are following the rules and guidelines.***



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## *Did You Know?*

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*Q: I recently had to serve notice to enter the rental unit for repairs, I sent the notice by email, but the tenant would not allow me to enter claiming that I had not given proper notice since he had not consented to service by email. Is this correct?*

Yes, the tenant is correct. In order to serve notices to the tenant by email there has to be consent by both parties. The Standard Form of Lease includes a section in which both parties can consent to service by email, it must be checked off in order to serve any type of notice by email. The tenant can also consent in writing for service by email at any time during the tenancy. The landlord should keep in mind that the tenant can withdraw their consent at any time during the tenancy.

*Q: Can you explain what is an “ex parte order” and when is it issued by the Landlord and Tenant Board?*

An ex parte order is an order that is made without holding a hearing or notifying the other party. The LTB can issue an ex parte order in the following circumstances: if a landlord has filed an application to end the tenancy because the tenant agreed to move out on a specific date (L3 Application) or a landlord has filed an application where the tenant did not comply with certain terms (L4 Application). An adjudicator must still review the application and can decide to send the application to a hearing before making a decision.

*Q: I obtained an Order from the Landlord and Tenant Board to evict my tenant who is not paying rent. For personal reasons, I have not followed up with evicting the tenant, I am wondering how long do I have to file with the Sheriff and enforce the writ of possession?*

Under Section 81 of the *Residential Tenancies Act*, an Order issued by the Landlord and Tenant Board evicting a tenant expires within 6 months of the date the order was issued, therefore, it must be filed with the appropriate Court Enforcement Office before that time. Once an eviction order expires,

there is no authority to renew it. In which case you would have to start the process all over again.

*Q: As a landlord, how often can I enter the rental unit to inspect it? My tenant is telling me that doing monthly inspections is too much and he’s not going to allow me in. Can he do that?*

The law does not set out a provision on how often the landlord can enter the rental unit to do a general maintenance inspection. Typically it is recommended that for this purpose, the landlord enter twice a year, in the fall and in the spring.

*Q: I have filed an application with the Landlord and Tenant Board to evict a problem tenant. My hearing is coming up and I’m trying to prepare my evidence that I will be relying on. In this case I would want the other tenants to attend the hearing as witnesses, but I’m not sure about the process to do that. Can you explain the process?*

The first thing you can do is to simply ask the person if they would be willing to attend the hearing as a witness. If the person agrees to attend, they just attend the hearing and tell the Board what they have seen or heard. However, if the person does not want to go to the hearing or if they need an official document in order to get time off work, you can then request that the Landlord and Tenant Board issue a Summons. If the Board issues the Summons it must be handed directly to the witness. You must also pay the witness a fee.

*Q: I gave notice to my tenant to move out for my daughter to move into the property. The tenant has not moved out so I filed an application to the Landlord and Tenant Board and a hearing has been scheduled. Does my daughter have to also attend the hearing even though she signed a Declaration?*

Yes, your daughter should still attend the hearing as the Adjudicator may have more questions to ask in order to determine if the application was filed in good faith.



## Vacant Home Tax Toronto

The Landlord's Self-Help Centre is aware that property owners of residential units have been receiving letters sent by the City of Toronto about taxing vacant homes located in the City. These letters inform residential landlords that the City has recently implemented an annual tax for vacant properties called the Vacant Home Tax (VHT) to increase the availability of housing by encouraging owners to rent out unoccupied residential properties. VHT requires homeowners to pay a tax of one per cent of the Current Value Assessment (CVA) for any vacant properties. A property is deemed vacant if:

- It is not the principal residence of the owner;
- It is not the principal residence of a permitted occupant;
- It has not been occupied by tenants for six months or more during the previous calendar year; or
- The owner fails to make a declaration of occupancy status under By-Law 97-2022.

Properties that are exempt from the Vacant Home Tax can be found at <https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/?accordion=how-it-works>

The Vacant Home Tax is due on **May 1<sup>st</sup>, 2023**. Payments can be made electronically using the *MyTorontoPay* portal or through your financial institution's online portal. The payee will differ for each financial institution, please contact your branch for more information.

For more information on the Vacant Home Tax, please visit <https://www.toronto.ca/services-payments/property-taxes-utilities/vacant-home-tax/?accordion=how-it-works>

## Landlord Lunch & Learn Series!!!

We are launching the Landlord Lunch & Learn Series on the following dates:  
April 12th – LTB Overview and Introduction to the Tribunals Ontario Portal.

May 10th – After you file – Notice of Hearing and How to Prepare.

June 14th – Hearing day and the Order – What to expect.

## LTB Updates

- The Landlord and Tenant Board (LTB) announced that beginning January 2023, they resumed scheduling initial hearings for all landlord and tenant applications as well as scheduling previously adjourned matters.
- They are still scheduling urgent matters on a priority basis.
- L1 applications, and L2 applications and tenant merits, will be scheduled on alternating weeks (for example, week 1 will consist of L1 blocks, and week 2 will consist of L2 and tenant merit blocks).
- Motions and review hearings also continue to be part of the schedule as required, as well as weekly French/bilingual hearings.
- Online dispute resolution continues to be available for all applications filed on the Tribunals Ontario Portal. Routine mediation also continues to be available upon request for all application types.
- **Effective February 10, 2023**, landlords can submit the following applications on the Tribunals Ontario Portal: L1, L2, L3, L4, L9 and L10.

For more information, visit

<https://tribunalsontario.ca/en/tribunals-ontario-portal/>

## *Easter Closure!*

Please be advised that our office is closed on Friday, April 7<sup>th</sup> and Monday, April 10<sup>th</sup> for the Easter Holiday. Our regular business hours resume on Tuesday, April 11<sup>th</sup> at 9:00am.

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