



A Landlord's Self-Help Centre Publication

Tribunals Ontario: Landlord and Tenant Board

Over the last several months there have been so many changes at the Landlord and Tenant Board (LTB) that it has been a challenge keeping up! All aim to improve operations and address some of the many issues and challenges identified by stakeholders.

The LTB adopted a digital first strategy for the delivery of its services with alternate hearing formats (such as written) available as an accommodation request. The transition to a digital first platform has been difficult for landlords and tenants. Participants have been struggling to participate in the process, whether is it a lack of knowledge and experience with computers or equipment issues such as no computer or internet access or dial-up connectivity, many have resorted to participating in their hearing by telephone. Housing advocates are sounding the alarm to raise public awareness that the move to the digital first hearing platform is creating barriers and preventing access to justice.

To address these concerns, the LTB launched a remote access point at the Toronto Hearing Centre in February 2021. Tribunals Ontario has also announced additional remote access points in Hamilton, London and Ottawa Hearing Centres effective June 21st. Parties who have received a Notice of Hearing can contact the LTB to make a request for access to the terminals at any of the hearing centres. Requests will be assessed by the LTB on a case-by-case basis and parties will be informed of its decision to grant or deny the request. If the request is granted, the parties using the terminal will participate in their hearing electronically.

The LTB has also responded to feedback received from stakeholders to improve the hearing process and created an implementation plan that will allow the LTB to have more hearings and provide landlords and tenants the opportunity to access same-day mediation services with a Dispute Resolution Officer (DRO) before attending an actual hearing with an Adjudicator. Effective May 31, 2021, the LTB has implemented the following enhancements: Zoom will be the videoconference platform to conduct proceedings; the use of a 'virtual concierge' will be piloted to take attendance and direct parties to breakout rooms; multiple tenant case management hearings will be conducted in one hearing block with several DROs; full day hearings will be held for most L2 applications to allow landlords and tenants more time for mediation to resolve their disputes; and the two Dispute Resolution Officer team approach to Above Guideline Increase CMHs will resume.

Navigate Tribunals Ontario is an online tool that has been launched to guide users through the Landlord and Tenant Board website. The tool uses a series of questions to link the user to the appropriate pathway to find information about rights and responsibilities or about LTB processes. "Navigate Tribunals Ontario is an example of how we are putting users first as we expand our digital services to improve access to justice," said Sean Weir, Executive Chair of Tribunals Ontario, <https://navigatetribunalsontario.ca/en/>.

[The Ombudsman's Office 2020-21 Annual Report](#), released on June 29, 2021, provides an update on the investigation into delays at the Landlord and Tenant Board. According to the report, 1200 complaints related to delays were received (pre-pandemic when delays were not as long). The report acknowledges the government and the LTB have implemented many changes due to COVID-19 and it is encouraged by the willingness to engage with the Ombudsman's Office. [Statement from Tribunals Ontario re Ombudsman's Report](#).

Landlords should anticipate further changes at the LTB in the coming months as many of the RTA amendments detailed in Bill 184 – *Protecting Tenants and Strengthening Community Housing Act, 2020* come into force, see page 3 for more details about Bill 184.

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Disclaimer

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Vacant Home Tax

The taxing of vacant homes to generate revenue and increase the supply of housing options is gaining momentum in municipalities across the province, at Queen's Park, and in Ottawa where a vacant home tax has been announced in the 2021 Federal Budget.

The vacant home tax is a tool that is used to increase the supply of housing by taxing owners of properties that are left vacant for a period of time. First launched in Vancouver in 2018 as the Empty Home Tax amid a housing crisis and low vacancy rates, the tax was intended to motivate speculators and owners of empty properties to put them on the rental market. The vacant home tax has garnered interest far and wide with the added bonus of generating revenue for cash-strapped cities.

The City of Toronto is poised to move forward with its vacant home tax scheme following approval from City Council in December 2020. A staff report offering recommendations for the tax design and implementation steps will be coming up for discussion shortly. Tax collection is expected to begin in 2023 and could generate between \$55 to \$66 million annually based on a one percent vacancy rate and a one percent tax.

Mississauga's City Council is also eyeing a variety of tax strategies that would generate new revenue without tapping the typical ratepayer. There are several options under consideration and include, a tax on vacant homes, an incremental property tax, a landfill levy, land value capture/tax increment financing, and encroachment tax. These approaches to taxation are explored in a staff report and could generate \$10-15 million annually. Mississauga City Council will examine its options further at a meeting this fall.

MPP Jessica Bell (University-Rosedale) is also lobbying for a regional vacancy tax that would target the Greater Golden Horseshoe. She brought a motion before the Ontario Legislature on June 3, 2021:

Motion 164 - That, in the opinion of this House, the Government of Ontario should address housing affordability for Ontarians by implementing a Greater Golden Horseshoe region-wide vacant home tax set at 2% percent of a home's property value for investor-owned properties that are not occupied for six or more months each year, and use the revenue generated by this tool to build affordable and deeply affordable housing.

It should also come as no surprise that the 2021 Federal Budget included the announcement of the government's intention to implement a national one percent tax on the value of non-resident, non-Canadian owned residential real estate that is considered to be vacant or under used. The target for implementation is January 1, 2022 and will require a declaration to be filed by the owners regarding the current property use. The federal plan is expected to generate \$700 million over four years starting in 2022-23.

2022 Annual Rent Guideline – 1.2%

The Province has announced the annual rent increase guideline at **1.2%** for 2022. Good news for landlords in contrast to 2021 when rents were frozen and no guideline increases were permitted for sitting tenants.

The formula that is used to determine the annual guideline is defined in section 120 (2) of the *Residential Tenancies Act, 2006*. It averages the monthly Ontario Consumer Price Index over a 12 month period ending in May of the previous year.

The 2021 rent increase freeze will have effectively changed the rent increase anniversary date for many tenancy agreements since the legislation permits rent may be increased once every twelve months, 12 months since the last increase or 12 months since the tenant moved in. By January 2022, landlords who last increased rent in January 2020 will have waited 24 months.

Notice of Rent Increase

Landlords are required to give a minimum 90 days' written notice of a proposed rent increase and they must give notice in the prescribed form. You will find the prescribed Landlord and Tenant Board form N1 and instructions at <https://tribunalsontario.ca/lrb/forms/#landlord-forms>.

Landlords must also follow the rules for the proper delivery of the form N1 to the tenant. Note: You **cannot** deliver the N1 notice by posting it on the door of the tenant's rental unit.

The 1.2% guideline takes effect January 1, 2022.

Research and learn!

The CanLII.org website provides public access to court judgments from all Canadian courts, including the Supreme Court of Canada, federal courts, and the courts in all Canada's provinces and territories. CanLII.org also contains decisions from many tribunals nationally.

Landlords can use CanLii to inform themselves generally and prepare for their hearing at the Landlord and Tenant Board by researching previous decisions from the LTB. Simply follow the link below to the searchable database, <https://www.canlii.org/en/on/ontlb/>.

Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020

On July 21, 2020 Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020*, was passed by the Ontario Legislature. However, numerous amendments to the *Residential Tenancies Act, 2006* were not enacted or proclaimed at that time. The Minister of Municipal Affairs and Housing has now proclaimed many of the outstanding RTA amendments and they will come into force on September 1, 2021.

Among the amendments coming in force are sections 87 and 89 which will permit landlords to file an application with the Landlord and Tenant Board to recover unpaid rent and compensation when the tenant is no longer in possession of the rental unit, and up to one year after they have vacated. This amendment addresses the jurisdictional questions raised in several Small Claims Court decisions pursuant to s. 168(2), which give the LTB exclusive jurisdiction to determine all applications and matters covered by the RTA.

It is important to note that the landlord will need to know the former tenant's new address in order to file an application with the LTB post tenancy. Also, when filing with LTB when a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant must have ceased to be in possession on or after the day the section comes into force.

The following is a list of RTA sections that will be proclaimed into force on September 1, 2021:

- Section 7 (5) - French version
- Section 57 (3) - Tenant remedies based on bad faith application
- Section 57 (8) - New legislation title will be added
- Section 57.1(2) - Limitation period extended to two years
- Section 57.1 (2.1) - Paragraph added- Transition, application pending
- Section 57.1 (2.2) - Paragraph will be added- Transition, previous application dismissed
- Section 71.1 (1) (2) - Affidavit or declaration has to be filed with application
- Section 71.1 (3) - Previous use of notices under s. 48, 49 or 50
- Section 72 (3) (4) - Own use ... Determination of good faith
- Section 73 (2) (3) - Demolition, conversion, repairs ... Determination of good faith
- Section 87 (1) - Arrears of rent ... Landlord can file application against current tenant and former tenant within one year
- Section 87 (3) - Application for compensation for use and occupation of unit
- Section 87 (4) - Word substitution to 'both owning by a tenant'
- Section 87 (5) - Word substitution to 'tenant or former tenant'
- Section 87 (6) (7) - Application of section
- Section 88.1- Section will be added pertaining to application for compensation for interference with reasonable enjoyment, etc.
- Section 88.2 - Section will be added pertaining to unpaid utility costs
- Section 89 - Compensation for damages
- Section 189.0.1- Section will be added pertaining to the application under s. 87, 88.1, 88.2 or 89- Notice from applicant and Certificate of Service
- Section 191 (1.0.1) - Same, tenant or former tenant no longer in possession – service of a notice or document

Recording a Landlord and Tenant Board hearing is an Offence

As a result of the COVID-19 pandemic, the Landlord and Tenant Board (LTB) along with most other tribunals have had to conduct hearings virtually using video conferencing platforms.

The advent of video conferencing platforms for hearings has made it easier for individuals and organized groups to record LTB hearings without permission and share the recordings on various social media platforms.

To prevent parties participating in a hearing from recording and sharing proceedings publicly, the government of Ontario has added a new provision (section 29) to the [Statutory Powers Procedure Act \(SPPA\)](#) making it an offence to record or publish a tribunal hearing unless an exception applies. Exceptions include unobtrusive recordings made by a party, representative or member of the media if authorized by the tribunal.

Section 29 of the SPPA was added as part of Bill 276

- *Supporting Recovery and Competitiveness Act, 2021*. It provides that anyone who is found to have committed such an offence will be facing a fine of up to \$25,000 dollars.

To learn more about Bill 276, visit

<https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-276>

To review the SPPA, please visit

<https://www.ontario.ca/laws/statute/90s22#BK53>

The general public continues to be permitted to attend and observe LTB hearings in a non-disruptive manner. Hearings are open to the public unless a LTB adjudicator has determined that a specific hearing should be closed to the public as per the LTB [Rules of Procedure](#).

If you wish to observe an LTB hearing, please contact the LTB directly to request a zoom link at 416-645-8080 or 1-888-332-3234.

Self-Help TIPS

In this issue we discuss the rules when serving notices or documents to a tenant and why it is essential the rules be followed.

The **Residential Tenancies Act** establishes rules for the delivery of various notices and documents to a tenant.

Documents such as notices of termination, notice of rent increase or notice to enter, must be served according to the rules.

Section 191 of the **RTA** outlines the process for the delivery of notices or documents by both landlords and tenants. If a notice or document is served improperly it can be deemed null and void and must be re-served.

Section 191 - The Residential Tenancies Act

subsection 191(1) sets out the following methods of service for a notice or a document to a tenant:

- By handing it directly to the tenant;
- By handing it to an apparently adult person in the rental unit;
- By leaving it in tenant's mailbox, or place where mail is normally delivered;
- By sending it by mail to the tenant. If a document is sent by mail, it is considered served on the fifth day after mailing. A notice or document sent by Xpresspost is deemed to be given by mail; or
- By any other means allowed in the Rules.

Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020 received Royal Assent on July 21, 2020. Some sections of **Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020**, came into force immediately and other sections will be proclaimed and come into effect on **September 1, 2021**.

Effective September 1, 2021 section 191 of the RTA will be amended by adding section 1.0.1 which will address serving a tenant or former tenant no longer in possession of the rental unit.

A tenant or former tenant no longer in possession may be served:

- By handing it directly to the tenant or former tenant;
- By sending it by mail to the address where the tenant or former tenant resides;
- By handing it to an apparently adult person where the tenant or former tenant resides; or
- By any other means allowed in the Rules.

Rule 3 of the **Landlord and Tenant Board's Rules of Practice** permits the following additional methods of service for serving documents on a Person or Party by:

- courier to the tenant; (deemed to be given on the next business day following the day it was given to the courier)
- fax, if there is a fax machine where the tenant carries on business or in the residence of the tenant; (deemed to be given on the date on the fax confirmation receipt)
- placing it under the door of the rental unit or through a mail slot in the door as long as the person remains in possession of the rental unit;
- any permitted method of service or posting it on the door of the rental unit if serving a notice under **section 27** of the **RTA** (24 hour notice of entry); or
- email if the person or party receiving it has **consented** in writing to service by email.

Note: The 24 hour notice of entry is the **only** notice that can **be posted** on the door of the rental unit.

A party may request in writing prior to the hearing or at the time of the hearing that the LTB permit an alternative method of service including service by email or service on the party's representative.

Service by Email

A tenant may consent in writing at any time to service by email. Landlords should also be aware that consent to service by email can be withdrawn at any time by giving notice in writing to the landlord.

Effective September 1, 2021 the Rules of Practice will be amended to include the following:

A document may be served on a former tenant or tenant no longer in possession of a rental unit, by:

- leaving it at the place where mail is ordinarily delivered to the person, sliding it under the door or putting it through a mail slot in the door of the address the tenant or former tenant currently resides; or
- sending the document(s) by courier to the address the tenant or former tenant currently resides.

Tips

- Do not:
 - × send documents or notices by registered mail
 - × send documents by email if written consent is not provided by the tenant
 - × enter the rental unit in order to place the notice or document in the rental unit
 - × leave the documents with the concierge at the condo building
 - × open the tenant's locked mailbox to deliver the notices
- When serving a notice or document, bring a witness with you. Although not required, try to obtain the tenant's signature acknowledging receipt of the documents.
- A landlord's application will be dismissed if the notice of termination was served improperly.

Did You Know?

Q: I am a small landlord renting out my basement unit, my tenant has stopped paying rent and I understand that I need to serve him a legal notice but I do not have a computer nor do I know how to use one. How can I obtain the legal notice to serve my tenant and other documents required to evict the tenant?

If you do not have access to a computer you can contact the Landlord and Tenant Board by phone and ask them to send you the forms by mail. In order to file applications with the Board after serving notice to the tenant, you can send applications by mail or fax to the Landlord and Tenant Board regional office. Applications can also be filed at some Service Ontario offices. The Board will then send a Notice of Hearing by mail with the hearing date to both you and the tenant. Hearings are being held by video conference but there is also the option of calling in and presenting your case by telephone. Instructions on how to access the hearing by telephone will be included on the Notice of Hearing.

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Q: My tenant has just moved out and after inspecting the property I noticed quite a bit of damages, how do I proceed to claim the damage costs from the tenant? Do I file with Small Claims Court or can I file with the Landlord and Tenant Board?

There are upcoming changes to the *Residential Tenancies Act* which will allow landlords to file applications for damages, arrears and unpaid utilities with the Landlord and Tenant Board rather than Small Claims Court, even if the tenant has already moved out. This new provision is under *Bill 184 – Protecting Tenants and Strengthening Community Housing Act, 2020* which will come into effect on September 1st, 2021.

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Q: Last year, because of the pandemic I gave my tenants a break and I did not increase the rent as they were already having difficulty paying. I understand that for 2021 there is a rent freeze, my question is can I serve a notice of rent increase to take effect on January 1st, 2022 for the guideline of 1.2% plus the increase I did not take in 2020?

No, you would not be able to claim the rent increase from 2020 retroactively, you can only increase the rent by the guideline of 2022.

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Q: I have just found out that one of my tenants has brought in three other people to live with him and is collecting rent from them, I suspect that he is collecting more rent than what he is actually paying me each month. Is he allowed to do this?

If you can prove that the tenant is collecting more rent from the roommates than what the tenant is actually paying you each month for rent, this would be considered an illegal act. In this case, you can serve your tenant with Form N6 – Notice to End your Tenancy for Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit. This notice is a 20 day notice to end the tenancy under (Reason 2), in this case the tenant is not given an opportunity to correct the situation. You can file an application (Form L2) along with a Certificate of Service and a copy of the Form N6 with the Landlord and Tenant Board immediately after serving the notice to the tenant.

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Q: We rent out our basement and we live upstairs. We had a problem in our unit where we had to make significant repairs. We understand that this caused a problem for the tenant as it was very noisy at times and we also had to enter her unit several times because of the work being done upstairs. She is now asking for a rent abatement based on the disruptions and inconvenience. We have offered what we think is reasonable but she wants more. How can we resolve this issue?

Tenants can usually claim a rent abatement if there has been any interference with their reasonable enjoyment of the rental premises. If you have already offered what you think is a reasonable abatement and the tenant does not agree, it will be up to her to file an application with the Landlord and Tenant Board for them to decide on this matter.

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Q: A former tenant of mine contacted me recently asking to provide rent receipts from three years ago. Do I still have to provide it?

According to Section 109 of the *Residential Tenancies Act*, a landlord has to provide a receipt to a former tenant only if the request is made within 12 months after the tenancy terminated.

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LSHC's 2021 Annual General Meeting and the Landlord Learning Forum

Landlord's Self-Help Centre will hold its Annual General Meeting on the evening of **Thursday, October 14, 2021**, please save the date. The 2021 AGM will be presented using a video conferencing platform such as Zoom.

The 2021 AGM will be held as an online event again this year due to the uncertainty of the COVID-19 pandemic and the economic recovery process. As we have in the past, LSHC is organizing the Landlord Learning Forum to be presented in conjunction with the AGM business meeting. The Forum provides a learning opportunity for members to keep abreast of the changing regulatory and operating environment.

The Landlord Learning Forum will feature educational presentations that are intended to provide members with updates and information on recent legislative reform and how these changes will impact small landlords, their tenancies, and their rental properties. LSHC will also invite a representative from Tribunals Ontario to speak about the many changes that have been implemented at the Landlord and Tenant Board in recent months.

Mark your calendar and stay tuned for additional information about the Landlord Learning Forum as we develop the line-up and confirm participants. The Program and Agenda, together with Financial Statements and the Annual Report, will be posted to the members' area when available - <https://landlordselfhelp.com/members-lounge/>

LSHC Board of Directors

We are pleased to announce that LSHC has recently welcomed several new members to the Board of Directors and we are now operating with a full board of directors.

Giovanni Cerisano was appointed effective June 23 to fill a vacancy and will stand for election by the general membership at the 2021 AGM. He is a small landlord, inspired to become a property manager by his positive experience with renting. Giovanni will assist with the overall governance and direction setting of the organization and will help to develop and implement fundraising strategies that will generate revenue to support the restoration of programs such as the paralegal student intern program.

Over the last several months LSHC has also appointed Petar Guzina, Vijay Shah and John Lam to fill vacancies at the board level. They will also stand for election at the AGM.

To learn more about LSHC's board members and review their individual bios, please visit <https://landlordselfhelp.com/about-lshc/board-of-directors/>

Stay connected ...



www.facebook.com/landlordselfhelp

Landlord Learning Modules

Landlord's Self-Help Centre has expanded the Landlord Learning Module library. These learning modules are instructional videos which provide easy to understand instructions for landlords who are completing Landlord and Tenant Board forms required under the *Residential Tenancies Act*. They are step-by-step video guides meant to assist small landlords avoid errors commonly made when going through the Landlord and Tenant Board termination process.

It is important that the Landlord and Tenant Board notices and applications are filled out correctly, otherwise the application may be dismissed and lead to the loss of significant time and money.

The Landlord Learning Modules are in a pre-recorded webinar format and provide detailed instruction and visual examples. The following learning modules have been added on the website include:

- COVID-19 and Residential Tenancies
- Subletting a Rental Unit
- Assigning a Rental Unit
- Form N8- Notice to End your Tenancy at the End of the Term (Persistent Late Rent Payment)
- Form L2 - Application to End a Tenancy and Evict a Tenant (based on Form N8 – Persistent Late Rent Payment)
- Landlord and Tenant Board Hearings
- Landlord and Tenant Board Orders
- Eviction by Sheriff
- Tenant Belongings: Situation #1 - Tenant Vacates on Notice
- Tenant Belongings: Situation #2 - Tenant is Evicted by the Sheriff
- Tenant Belongings: Situation #3 - Tenant Abandons the Rental Unit
- Tenant Belongings: Situation #4 - Tenant Dies

Visit <https://landlordselfhelp.com/landlord-learning-modules/> for the complete list of modules. Podcast format (audio only) visit, <https://landlordselfhelp.com/sound-advice-for-landlords-podcast/>

DISCLAIMER

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