



Quarterly News

A Landlord's Self-Help Centre Publication

The COVID-19 Pandemic and Eviction

The novel coronavirus (COVID-19) has impacted communities around the world and we continue to adjust to these unprecedented times as we navigate the response to COVID-19. In Ontario, the Lieutenant Governor issued a Declaration of Emergency under the *Emergency Management and Civil Protection Act* on March 17, 2020. The Declaration has been extended several times, with each extension approved by the Legislature. The Declaration is now due to expire on July 15, 2020.

The Declaration of Emergency is the tool that enables the government to issue emergency orders which are intended to protect the health and safety of all Ontarians. The government reviews emergency orders that are in place to determine when it is safe to amend or lift them and assesses whether the Declaration needs to be extended.

Residential landlords across Ontario have been impacted by the moratorium on evictions which was an emergency order issued by Chief Justice Geoffrey Morawetz of the Superior Court of Justice. The March 19, 2020 order imposed a province-wide eviction moratorium, deemed necessary to ensure no one faced the risk of homelessness during the pandemic. The order states,

THIS COURT ORDERS that during the suspension of regular court operations by the Chief Justice, the eviction of residents from their homes, pursuant to eviction orders issued by the Landlord and Tenant Board or writs of possession, are suspended unless the court orders otherwise upon leave being granted to a party by the court pursuant to the court's procedures for urgent motions.

Unfortunately, as a result of the moratorium on evictions, many small landlords find themselves on the brink of financial hardship. Landlords have been unable to enforce orders that were obtained from the Landlord and Tenant Board (LTB) pre-pandemic. In many of those cases, the tenant has not paid rent since 2019. The timing of the moratorium on evictions captured many landlords who had completed the termination process and scheduled an eviction with the Court Enforcement Office. The eviction moratorium has meant these landlords must wait until the order is lifted before they can recover possession of their rental unit.

For many other landlords, the problems started as the economy shut down and people were laid off from their jobs, many tenants were simply unable to pay the rent. Throughout the moratorium landlords have been encouraged to work with their tenants to create payment schedules for those who are unable to pay all the rent. For those who have tenants that flatly refuse to pay rent, landlords are issuing the N4 notice for nonpayment of rent as the first step in the process which can lead to the termination of the tenancy. The LTB continues accepting applications however, it is not scheduling hearings for those that seek the termination of the tenancy and eviction. The LTB is conducting hearings by telephone as well as written hearings for issues that are not related to tenant eviction.

For the landlords faced with tenancy issues that pose serious health and safety issues or involve illegal activity in the rental unit, **they can seek relief from the LTB based on urgent matters.** The process that is followed for an urgent matter requires that the landlord give proper notice to their tenants and file the appropriate forms with the LTB.

The tenant **MUST** be causing a serious and ongoing health or safety issue, or the tenant has committed an illegal act in the rental unit in order for the landlord to serve notices that address these issues, Form N6 or N7.

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Disclaimer

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

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Urgent Hearing Request and Procedure

Landlords that are navigating tenancy issues which pose serious health and safety issues or involve illegal activity in the rental unit can seek relief from the LTB based on urgent matters.

Relief for urgent matters

The process that is followed for an urgent matter requires that the landlord give proper notice to their tenants and file the appropriate forms with the LTB, the notices are either,

- [N6: Notice to End your Tenancy for Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit; or](#)
- [N7: Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex.](#)

The tenant **MUST** be causing a serious and ongoing health or safety issue, or the tenant has committed an illegal act in the rental unit or residential complex. The application filed with the Landlord and Tenant Board by the landlord must relate to “a serious and ongoing health or safety issue at the residential complex or a serious illegal act that occurred at the residential complex.” The LTB application must be accompanied by the Request for Urgent Hearing form which allows the LTB to consider the urgency of the matter.

If the request is approved, a telephone or written hearing will be scheduled. For more information on the Request for Urgent Hearing, visit <http://www.sjto.gov.on.ca/documents/ltb/Other%20Forms/Urgent%20Motion%20EN%20-%20instructions.pdf>

To obtain the Request for Urgent Hearing form, visit <http://www.sjto.gov.on.ca/documents/ltb/Other%20Forms/Urgent%20Motion%20EN.pdf>

If the landlord is successful and the application is granted at the hearing, the LTB will issue an eviction order. The landlord will then have to request the permission of the Superior Court of Justice for the stay on evictions to be lifted to allow the order to be enforced. The landlord can do this by filing a,

- Notice of Motion for Directions (form 75.6 from the *Rules of Civil Procedure* Forms) along with
- Supporting Affidavit (form 4D) and
- copy of the LTB order

It is important to note that landlords may represent themselves in this matter at Superior Court. However, we strongly recommend that anyone planning to self-represent prepare themselves by gaining a thorough understanding of the process and have the confidence to speak on their own behalf at the hearing. If the assistance of a legal service provider is required, you will need to hire a lawyer as paralegals cannot represent at the Superior Court level.

In the Motion for Directions, you must state what you are asking the court to do and make sure to reference the pertaining rules under the *Rules of Civil Procedure*.

This motion is pursuant to rules 60.17, 60.03 and 60.10 of the *Rules of Civil Procedure* as it was directed by Justice Nightingale in the case of *Neumann v. Anderson*, 2020 ONSC 3518 (CanLII). For more information on the case *Neumann v. Anderson*, 2020 ONSC 3518 (CanLII), visit [https://www.canlii.org/en/on/onsc/doc/2020/2020canlii36845/2020canlii36845.html?autocompleteStr=Neumann%20v.%20Anderson%2C%202020%20ONSC%203518%20\(CanLII\)&autocompletePos=1](https://www.canlii.org/en/on/onsc/doc/2020/2020canlii36845/2020canlii36845.html?autocompleteStr=Neumann%20v.%20Anderson%2C%202020%20ONSC%203518%20(CanLII)&autocompletePos=1)

Visit <https://www.ontario.ca/laws/regulation/900194> to review the *Rules of Civil Procedure*. To obtain the Notice of Motion for Directions and the Affidavit forms, visit <http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/>

In the Affidavit, you must state the facts relating to your eviction order issued by the Landlord and Tenant Board, please see our [Form 75.6 - Motion for Directions](#) and [Form 4D - Affidavit](#) sample forms.

Once you have completed your forms, all your documentation, including your LTB order, has to be emailed to your local Superior Court of Justice. The forms must be in a Word document format, whereas the LTB order should be in PDF form, and the size of the combined files must not be larger than 10MB. To find your local Superior Court email address, visit <https://www.ontariocourts.ca/scj/files/Courthouse-contact-information%2025-Mar-2020.pdf>

Once the judge determines that this is an urgent matter, he or she will issue an endorsement by email setting out the directions to follow in order to file the LTB order with the sheriff. For more information about this process, visit the Superior Court of Justice website under the Regional Notices section https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/#REGIONAL_NOTICES

Tribunals Ontario Fee Increase

Tribunals Ontario will implement a fee increase on July 1, 2020. This increase was originally planned for April 1, 2020 but postponed due to the COVID-19 pandemic.

For the LTB, landlords should expect fees to increase for filing the A2 and A4 applications to \$201. The most commonly used landlord applications, the L1 Termination and Non-Payment of Rent and L2 Terminate Tenancy and Evict will increase to \$201. However, if you're using the e-file option the fee is \$186. The L6, L7, L8 and L9 applications will also increase to \$201.

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

Bill 184 was introduced on March 12, just prior to the adjournment of the Ontario Legislative Assembly due to health risks presented by the COVID-19 pandemic.

The Provincial Housing Supply Action Plan Consultation, held in December 2018 and January 2019, informed the development of the legislation and has been referenced on numerous occasions by the government throughout the legislative process. LSHC's submission¹ for that consultation contained twenty-seven recommendations which represented common issues and pitfalls small landlords routinely face and was developed using the input we received from small landlords through an online poll.

Bill 184 includes reforms which would improve the operating environment for small landlords:

- Remedies for unpaid utilities;
- Require notice from tenants of their intention to raise new issues at a non-payment of rent hearing;
- Allow landlords to make post tenancy applications to the LTB for monies owed, just as tenants are able to do, rather than the Small Claims Court;
- Pre-Hearing Repayment Agreements which can include a provision for an ex-parte eviction order, (without a hearing) for a breach of the agreement;
- Landlords can apply to LTB for damages due to tenant's behavior – such as tampering with CO detector.

Another positive amendment and improvement for landlords is the clarification of the rules respecting lawful rent. The amendment would permit an improper notice of rent increase to be deemed lawful **if** the tenant has paid the increased rent for 12 consecutive months and has not disputed the increase.

The Bill also includes enhanced protection provisions respecting landlord's bad faith, these include:

- The doubling of fines – individuals from \$25,000 to \$50,000 and Corporations from \$100,000 to \$250,000;
- The new rent paid by the tenant for one year;
- 1 month rent as compensation when termination is sought for purchaser's own use;
- the payment of 1 month compensation when termination is sought for renovation and/or repairs in a rental property containing fewer than 5 units;
- Increase time for tenant to file for bad faith compensation for 1 year to 2 years
- Consideration of landlord's previous action on no-fault grounds N12 and N13

The Province scheduled Second Reading of Bill 184 on May 26, 2020, despite an agreement between the

government and the opposition that business in the spring session would be COVID-related only. The Bill carried on division and it was referred to the Standing Committee on Social Policy on May 27 for further study. This included public submissions, both oral and written, and a clause by clause review.

Three days of hearings were held on June 24, 25 and 26 before the all-party Social Policy Standing Committee with written submissions accepted until 6 pm on June 26, 2020. The hearings were dominated by tenant-side interested parties, both individuals and groups. The issues raised by tenant-side presenters included: evictions with no hearing; illegal rent increases becoming legal; no opportunity to raise issues in dispute; and tenants will be forced into settlement agreements

Several small landlords appeared before the committee and made excellent submissions which shed light on the challenges and struggles faced as a result of the regulatory environment and the long delays at the Landlord and Tenant Board. Teresa Almeida, who is a small landlord that made a strong submission, has posted her presentation at <https://www.youtube.com/watch?v=iZ4lWYpe1tw&t=48s>. A few tenant deputants acknowledged the difference between large corporate landlords and small landlords, this was noted and reiterated by some of the committee members with one noting that perhaps the difference ought to be recognized in the legislation. LSHC prepared and submitted a written submission to the Standing Committee on Social Policy.² The Committee completed consideration of Bill 184 and has reported to the Legislature. It passed two amendments:

- Section 83 - the following was added:
Refusal for certain arrears of rent - (6) Without restricting the generality of subsections (1) and (2), if a hearing is held in respect of an application under section 69 for an order evicting a tenant based on arrears of rent arising in whole or in part during the period beginning on March 17, 2020 and ending on the prescribed date, in determining whether to exercise its powers under subsection (1) the Board shall consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant's arrears; and
 - Section 194 (1) removed the "if the parties consent to participating in the mediation or other dispute resolution" provision.

Following the Report of the Standing Committee on July 6, 2020, Bill 184 has been ordered for Third Reading.

¹ <https://landlordselfhelp.com/media/LR-2019-LSHC-Housing-Supply-Action-Plan-Submission-2019-01-25.pdf>

² <https://landlordselfhelp.com/media/LSHC-Bill-184-Submission-OLA-Social-Policy-2020-06-26.pdf>

Self-Help TIPS

Due to Covid-19 pandemic the Landlord and Tenant Board (LTB) has suspended all in person hearings until further notice. In this issue of the Self-Help tips we will discuss how telephone hearings are conducted for urgent or non-eviction matters at the Landlord and Tenant Board.

Evictions

Effective of March 13, 2020 in-person hearings are postponed and rescheduled to a later date. The LTB is not hearing eviction applications and is **not** issuing eviction orders unless the matter is **urgent** due to a serious and ongoing health or safety issue at the residential complex or a serious illegal act that occurred at the residential complex.

The LTB continues to accept all applications and will schedule telephone or written hearings for non-eviction matters. Non-eviction matters include applications filed by tenants and applications filed by landlords seeking only payment of rent arrears or compensation for damage.

Filing your application - As of March 16, 2020, all front-line counter services at the Landlord and Tenant Board were closed until further notice. The most common types of applications can be filed online at <http://www.sjto.gov.on.ca/ltb/e-file> . If you are not able to use the e-File option, you can submit your application to your LTB regional office by mail or fax.

Telephone Hearing - A telephone hearing is similar to an in person hearing with some minor differences. A telephone hearing is conducted over a conference call. The Notice of Hearing will provide each party with the time and date of the hearing, and the telephone number and access code. You will first dial the telephone number provided and then you will be asked to enter your access code. If you have a problem connecting to the conference line you should call the Board's call centre number at 1-888-332-3234 or 416-645-8080 in the GTA.

Both the landlord and the tenant will be given the opportunity to present their evidence and question the other parties. An adjudicator will listen to the evidence of all parties and can also question the parties, their witnesses and the evidence they present. After the hearing, the Adjudicator will issue a written decision called an Order which will be mailed to the parties.

Presenting Evidence

To avoid a possible delay in the hearing, you should provide all copies of any evidence to the Board and the other party prior to the hearing. The LTB will provide the parties with instructions about the exchange of documents or evidence they wish to rely on during the telephone conference that wasn't included with the original application.

Evidence can be documents such as sworn affidavits, notices of termination, medical certificates, pictures, rental agreement, emails, text messages, photographs, complaint letters, by-law reports, police reports, property standards orders or any other document that would be helpful to prove your case. If documents or evidence are not provided prior to the hearing, the Adjudicator may proceed without this evidence or adjourn the hearing for a later date. The Adjudicator will also provide you with a date prior to the next hearing to provide disclosure of all documents to the Board and to the other parties.

The Adjudicator will ask the parties or their representatives to identify themselves, explain the reasons why the application was made and provide any evidence which supports their reasons. The respondents and the Adjudicator may question the applicant and any of their witnesses. Then, the respondents present their own evidence and call any witnesses. The applicant also has the right to question the respondents and their witnesses.

Witnesses

If you have witnesses to support your case you have two options, they can either:

- be with you on an extension or on a speakerphone, or
- call in from another location and provide them with the telephone number and code to call to join the conference call.

Missed Hearing

If you or your representative fail to phone in, the hearing may proceed without you. If the **applicant** does not phone in the Adjudicator may dismiss the application. If you are the **respondent** and fail to phone in, they may hear the application without you and issue an order based on only the applicant's evidence.

Tips

- Ensure that you or your representative attend the hearing, a member may dismiss an application if the applicant is not present when the hearing begins.
- Be prepared and research your rights and responsibilities and present the "best" evidence you feel supports your application. You will not receive a second chance.
- Go to the Landlord and Tenant Board website at www.sjto.gov.on.ca/ltb/rules-practice-directions/ and research the LTB's Rules of Practice and the Interpretation Guidelines, read the ones that apply to your case.
- For more information on COVID-19 and the Landlord and Tenant Board, visit <http://www.sjto.gov.on.ca/ltb/covid-19/>

Did You Know?

Q: I have a one year lease with my tenant which is coming to an end. I'm assuming that the tenant is moving out because the lease is ending, so I have started advertising for a new tenant. However, the tenant is now telling me that he might not move out and wishes to continue living there. I understood that when the lease is over the tenant must move out, is that not the case? Can he stay there indefinitely?

If the tenant plans to move out at the end of the lease then they must provide proper notice which has to be 60 days and given on the proper form which is Form N9. However, the end of the lease does not necessarily mean that the tenant has to move out, the tenant can still continue the tenancy on a month to month basis and under the same terms and conditions of the expired lease.



Q: I served my tenant the Form N12 because I plan to move in to the house with my family. The tenant did not move out by the termination date and continues to live in the unit, should I still pay the one month's compensation even though the tenant is still there?

According to the law, the landlord must pay the one month's compensation to the tenant by the termination date on the notice even if the tenant has not vacated the unit. If you do not pay the compensation, there is a strong possibility that your application could be dismissed by the Landlord and Tenant Board when you're seeking an order to evict the tenant.



Q: Recently a tenant of mine moved out without giving me any notice and has left a person living in his unit without my knowledge. However, this person has approached me and is asking me to allow him to remain living there. How do I deal with a situation like this?

If you do not want to rent to this person, you have the right to file an application with the Landlord and Tenant Board based on an unauthorized occupancy because the original tenant did not obtain your consent to assign the tenancy to this person. On the other hand, if you decide to allow the individual to stay then you are allowed to negotiate a new tenancy agreement as long as you enter into the tenancy agreement no later than 60 days after you have discovered this person residing there.



Q: I plan on selling my rental property and I have advised the tenants that they will have to move out, I think it will be easier to sell it vacant. They are refusing to leave, how do I get them out based on the sale of the property?

You can only serve a notice of termination of the tenancy once you have signed an Agreement of Purchase and Sale and on two conditions: 1) the purchaser intends to occupy the unit and 2) the property has three units or less. At that point, you would serve the tenant with a Form N12 giving them 60 days' notice to leave at the end of the term or rental period. If the purchaser does not plan on living there then the tenants have the right to remain and the purchaser would have to assume the existing tenancies. The forms can be obtained from the Landlord and Tenant Board's website at www.sjto.gov.on.ca/ltb/forms/.



Q: I have been renting a house to a tenant for several years and haven't had any problems with him, he always pays his rent on time that's why I was surprised when he didn't pay the rent for this month and did not communicate with me why he was not paying. I contacted him to see if he had forgotten and that's when he told me that he was not going to pay the rent because he was laid off from his job due to the COVID-19 pandemic. I understood his situation so I suggested a payment plan, but he simply refused it. How do I deal with this situation when he won't agree to pay me even a portion of the rent?

If the tenant refuses a payment plan and does not pay the rent at all then you're allowed to serve him the Form N4 - Notice of Early Termination for Non-Payment of Rent which allows him to pay the rent owing within 14 days. If the rent is still not paid you can then file an application (Form L1) with the Landlord and Tenant Board. However, in light of the current COVID-19 situation there are no hearings being scheduled, you will have to wait until the eviction restrictions are lifted for the Board to hear your case.



Q: I entered into a lease agreement with my tenants a few months ago, he is telling me now that some of the lease clauses are contrary to the Residential Tenancies Act and therefore the lease is invalid. Is this correct?

All of the RTA provisions will still apply to a landlord and tenant even if certain terms of the lease agreement are contrary to the Act. If there is a contradiction in the lease, the rights and obligations set out in the Residential Tenancies Act will supersede whatever is in the agreement. This means that any part of the agreement is contrary is not enforceable, although the rest of the agreement is still valid.



What's New?

Landlord Learning Modules

LSHC's latest project is the Landlord Learning Modules. 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. An incorrect notice of termination typically means the landlord must start the process again by re-issuing the notice.

The Landlord Learning Modules are in a pre-recorded webinar format and provide detailed instruction and visual examples. Landlord Learning Modules can be found at <https://landlordselfhelp.com/landlord-learning-modules/> and in audio format at <https://landlordselfhelp.com/sound-advice-for-landlords-podcast/>. The learning modules currently available include:

General Information

- COVID-19 and Residential Tenancies

Rent Increase

- Form N1- Notice of Rent Increase (Guideline Increase)

Non-payment of Rent

- Form N4 - Notice to End your Tenancy Early for Non-payment of Rent
- Form L1- Application to Evict a Tenant for Non-payment of Rent and to Collect Rent the Tenant Owes
- Form L9 - Application to Collect Rent the Tenant Owes (Not termination of the tenancy)
- Form L1/L9 Information Update as of the Hearing Day Form

Agreement to End the Tenancy

- Form N11- Agreement to End the Tenancy
- Form L3 - Application to End a Tenancy- Tenancy Gave Notice or Agreed to Terminate the Tenancy (N9 & N11)

Interfering with Others, Damage or Overcrowding

- Form N5- Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding
- Form L2- Application to End a Tenancy and Evict a Tenant (based on Form N5)

Certificate of Service

- Certificate of Service

Own Use

- Form N12 - Terminating a Tenancy for Landlord's Own Use
- Form N12 - Terminating a Tenancy for Purchaser's Own Use
- Form L2 - Application to End a Tenancy and Evict a Tenant (based on Form N12)

Causing Serious Problems

- Form N7- Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex
- Form L2 - Application to End a Tenancy and Evict a Tenant (based on Form N7)

Illegal Acts

- Form N6 - Notice to End your Tenancy for Illegal Acts or Misrepresenting Income in a Rent Geared to Income Unit
- Form L2- Application to End a Tenancy and Evict a Tenant (based on Form N6)

Stay connected ...



Short Term Rental Appeal:

Many small landlords will remember the Local Planning Appeal Tribunal (LPAT) ruled on the appeal of the City of Toronto Short Term Rental Regulation Bylaw last fall and found in favour of the City of Toronto.

Shortly after the LPAT decision, several of the landlord parties announced their intention to appeal. The process for appeal requires the parties to first seek leave to appeal, which means that a motion is filed with the court to determine whether there is merit for an appeal.

On June 25, 2020, Justice Corbett dismissed the motion seeking leave to appeal that was brought by Westhaver Boutique, Whitehall Suites Inc., and Livingsuites Toronto Inc. and the court granted costs to the City of Toronto (\$7500) and FairBnB Canada (\$3500).

Justice Corbett's decision noted that the court does not ordinarily give reasons on motions for appeal and further noted "... in this case it seems likely that there will be further administrative proceedings and potentially litigation respecting the underlying issue of using residential premises for certain kinds of short-term rental ..."

CITATION: Westhaver Boutique Residences Inc. v. Toronto, 2020 ONSC 3949 Court File No. 670/19 LPAT Case No.: PL 18008 DATE: 20200625

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