

# Co-op Evictions at the LTB - *the nuts and bolts*

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# Short-forms

CCA = *Co-operative Corporations Act*

CHF = Co-operative Housing Federation

CMH = Case Management Hearing

GMM = General Members' Meeting

LSUC = Law Society of Upper Canada

LTB = Landlord and Tenant Board

MH = Merits Hearing

NTA = Notice to Appear

RGI = Rent Geared to Income

RTA = *Residential Tenancies Act*

SJTO = Social Justice Tribunal of Ontario

# Overview

1. Eviction Law Reform
2. Grounds for eviction at the LTB
3. Other reasons to use the LTB
4. The LTB
5. Six steps to the process
6. Document Service
7. New Model Occupancy By-law
8. Co-op Decisions at the LTB
9. Resources
10. What co-ops should do now

# 1. Eviction Law Reform

- Until May 31, 2014
  - internal co-op process and then application in Superior Court
- Starting June 1, 2014
  - Amendments to CCA and to RTA
  - For grounds in the RTA: internal co-op process, LTB notice to member, then application to LTB
  - For grounds not in the RTA: internal co-op process and then application in Superior Court



## 2. Grounds for eviction at the LTB

1. **Persistent late payment**
2. No longer eligible for social housing
3. **Arrears**
4. Misrepresentation of income in an RGI household
5. Illegal acts
6. Undue damage caused wilfully or negligently
7. Undue damage significantly greater than in #6
8. **Substantial interference with reasonable enjoyment**
9. Serious impairment of another person's safety
10. Too many people in the unit for health and safety standards

# 3. Other reasons to use the LTB

- Where member gives notice of leaving but doesn't leave
- In student co-ops – where student doesn't leave at end of fix term
- Where unit has been abandoned

# 4. The LTB

- New process
- LTB Hearing Officer (Case Management Hearing)
- LTB Member (Merits Hearing)
- Electronic forms
- Co-op member's response

# 5. Six steps to the process

Step 1. Internal Process

Step 2. LTB Notice

Step 3. LTB Application

Step 4. Case Management Hearing

Step 5. Merits Hearing

Step 6. Enforcement







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# Step 1. Internal Process

- Notice to Appear
  - served min. 10 days notice (old and new)
- Meeting - quorum, minutes
- Decision
  - served max. 5 or 7 days after meeting (old)OR
  - served max. 10 days after meeting (new)

# Internal Termination Dates

- Old By-law:
  - **Arrears = 10 days**
  - Domestic Violence = 1 day
  - *(Unable to live independently = 30 days)*
  - Occupancy Standards = 90 days
  - All other reasons = 30 days
- New By-law:
  - **All reasons = at least 10 days**

# Member Appeals

- Old CCA requirement – appeals in all cases
- New CCA requirement – appeals *“if the by-laws provide a right of appeal for a termination on the grounds set out in the notice of termination...”* CCA section 171.8(3)

Proposed by CHF Canada – Ontario Region in the Model By-law:

“A member can appeal a board of directors’ eviction decision to the membership if the grounds of termination are not:

- Arrears
- Domestic violence
- An act involving drugs or violence
- An illegal act, or
- An act or failure to act that impairs the safety of others.”

# Step 2. LTB Notice

- **AFTER internal termination date (or appeal)**
- N4C – arrears
  - Note that the amount on the N4C is not necessarily the ledger amount – only the regular monthly housing charges
- N5C – nuisance, damage, overcrowding
- N6C – illegal acts, misrepresentation of income
- N7C – serious problems
- N8C – **persistent late payment**, no longer qualified for RGI

# LTB Termination Dates

- 14 days – arrears
- 20 days – misrepresentation of income
- 10 days OR 20 days – illegal activity
- 20 days – non serious damage
- 10 days – serious damage
- 20 days – interference with reasonable enjoyment
- 10 days – impairment of safety
- 20 days – too many occupants
- 60 days – **persistent late payments** or failure to meet qualifications for housing

# Grounds that can be “fixed” “Voiding the notice”

Co-op cannot file eviction application if:

- On an N4C, arrears are paid within the 14 days notice period
- On an N5C,
  - behaviour stops within seven days of notice
  - undue damage (the lesser version) is paid for within seven days of notice
  - number of occupants is reduced to acceptable level within seven days

# 2<sup>nd</sup> notices

Issue a 2<sup>nd</sup> N5C, within six months, which cannot be “voided”:

- if behaviour continues again
- if there is more “non-serious” damage
- If there are again too many occupants





# Step 3. LTB Application

- C – Application to Evict – all applications
- C1 – for arrears – at least 15 days after an N4C
- C2 – for nuisance, overcrowding, illegal acts, problems, persistent late payments – following an N5C, N6C, N7C, N8C (no waiting period)
- C3 – on consent or after member gave notice – without notice (*ex parte*)
  
- Receive Notice of Hearings by email a few days later
- Co-op member response

# Step 4. Case Management Hearing (CMH)

*Focus on the future, not the past*

- Why?
- What to do before?
- What to do during?
- What to do after?

# Step 4. Case Management Hearing (CMH)

- How will it be conducted?



# Review of a sample decision

- arrears
- response filed
- co-op represented by counsel
- consent order agreed to by parties
- Points for negotiation
  - filing fee
  - payment of arrears
  - payment of ongoing housing charges
  - confidentiality?
  - consequences of breach – 94.11 application without notice within 30 days of a breach

# Step 5. Merits Hearing (MH)

*Focus on the past, not the future*

*formal  
hearing*

- Why?
- What to do before?
- What to do during?
- What to do after?



# Step 6. Enforcement

- Eviction
- Collecting the arrears



# Estimated Timeline – arrears eviction

**Day 0** serve notice to appear

**Day 10** hold board meeting

**Day 20** last day to serve decision (*day 17 for co-ops with 7 days in their by-laws*)

**Day 20** internal termination date (*see by-law – could be other date*)

**Day 21** serve N4C notice

**Day 36** if no payment received, earliest day to file C, C1 and application fee

*Day 38* receive Notice of Hearings

*Day 70* case management hearing

## If not settled

*Day 75* interim order issued

*Day 90* merits hearing

*Day 95* decision issued

## If settled

*Day 75* consent order issued

## If eviction ordered

*Day 115* sheriff sets date to vacate

*Day 120* sheriff enforces

**The dates scheduled by LTB or Sheriff are italicized.**



# 5. Six steps to the process

Step 1. Internal Process

Step 2. LTB Notice

Step 3. LTB Application

Step 4. Case Management Hearing

Step 5. Merits Hearing

Step 6. Enforcement





# 6. Document Service

CCA paragraph 171.23(1)

- (a) by handing it to the person;
- (b) by handing it to an apparently adult person in the member unit;
- (c) by leaving it in the mail box where mail is ordinarily delivered to the person;
- (d) if there is no mail box, by sliding it under the door of the member unit or through a mail slot in the door or leaving it at the place where mail is ordinarily delivered to the person; or
- (e) by sending it by mail to the last known address where the person resides or carries on business.

If mailed, deemed served on the fifth day after mailing

*No more taping  
it to the door!*



# 7. New Model Occupancy By-law

- Article 11 – dealing with arrears
- Article 12 – dealing with other problems
- Article 13 – eviction procedures
- Article 14 – alternatives to evictions
- Article 15 – appeals
- Article 16 – legal action
- Article 17 – miscellaneous (including service rules)

# Schedules regarding evictions

<b>Schedule D:</b>	<b>NTA Arrears</b>
Schedule E:	NTA Other
<b>Schedule F:</b>	<b>Board of Directors' Eviction Decision for Arrears</b>
Schedule G:	Board of Directors' Eviction Decision
<b>Schedule H:</b>	<b>Notice of Eviction Decision for Arrears</b>
Schedule I:	Notice of Eviction Decision

# 8. Co-op Decisions of the LTB

- at least 73 applications filed
- decisions released on 26 files (as of Nov 20)
- 5 cases of members giving notice of move-out and failing to leave – evictions granted in all but one
- 15 for arrears – 11 settled; one application dismissed; evictions granted in three
- 5 for arrears and persistent late payment – four settled; eviction granted in one
- 2 settlements have failed and evictions subsequently granted

# Highlights from decisions

- N4C – requires that you include only the “regular monthly housing charges” - dismissal of an application where late fees were included – SWC 00019 14
- ALL the members of a household give notice that they are leaving – dismissal of an application because one co-op member cannot give notice for two co-op members

# Highlights from decisions

- Section 203.1 of the *RTA* prohibits the LTB from making determinations about or reviewing decisions about the eligibility for or the amount of subsidy – CMHC or HSA co-ops
- Section 94.9 of the *RTA* prohibits the LTB from reviewing whether the co-op member was properly evicted by the Board under its by-laws
- TEC 00026 14 - HR

# Highlights from decisions

- "unfair to co-op of the LTB to disregard or not give proper weight to the democratic process established by the Co-op for terminating occupancy and membership rights"
  - TNC 00032 14 SA
- Co-op members have the right to request the LTB to review a decision - "a review is not an opportunity to re-argue the issues in the hopes of having a different outcome"
  - TNC 00032 14 RV



# 9. Resources



- LTB website: <http://www.ltb.gov.on.ca/>
  - Forms, brochures, ap'n status
- *Evictions: What Co-ops Need to Know* - CHF Canada Ontario Region website  
<http://www.chfcanada.coop/eng/>
- CHF model by-law and guide to model by-law
- Iler Campbell LLP Blog  
<http://www.ilercampbell.com/blog/>
- RTA; CCA
- LTB Rules of Practice and Interpretation Guidelines
  - Rule 34 and SJTO Practice Direction re Co-ops
- CanLii caselaw: <http://www.canlii.org/en/on/onltb/>

# More Resources

- Feldman, Residential Tenancies, Ninth Edition, 2009
  - Chapter 16: Proceedings before the Landlord and Tenant Board
  - 10<sup>th</sup> edition pending
- Fleming, Residential Tenancies in Ontario, Second Edition, 2011
- Fleming, Ontario Landlord & Tenant Law Practice, 2014
- Butkus, The 2014 Annotated Ontario Landlord and Tenant Statutes, 2013
- Small Claims Court website for enforcing judgments  
[http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/After Judgement Guide to Getting Results EN.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/After_Judgement_Guide_to_Getting_Results_EN.pdf)

# 10. What co-ops should do now

1. Change service methods
2. Change schedules D through I of the Occupancy By-law
3. Work through the Model Occupancy By-law with the Board of Directors (or By-laws Committee) for presentation to the members



**Questions -  
you *STILL* likely have some!**



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