

EVICCTIONS

WHAT CO-OPS NEED TO KNOW



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Eviction Steps for Co-op and for Member

A new eviction system for housing co-ops came into force on June 1, 2014. The new law made changes to the *Co-operative Corporations Act* and the *Residential Tenancies Act (RTA)*. Most evictions will now be handled by the Landlord and Tenant Board (LTB) after the co-op's internal process is done. In a few cases where the grounds of eviction are not in the RTA, the courts will still hear the case.

Evictions: What co-ops need to know is an educational series to help Ontario co-ops understand and work with the new eviction system. Check other issues in the series for more details on the new system. Each issue is posted on the Ontario eviction system web page on the Resource Centre. The page can be accessed from the Ontario Region homepage on the CHF Canada website (www.chfcanada.coop).

This issue of *Evictions: What co-ops need to know* goes through the steps in an eviction from the viewpoint of both

the member and the co-op. CHF Canada thinks it would be better if there were never any evictions. But we recognize that there will always be some. In this Issue we deal with the steps in the eviction, but we recommend that at every stage the co-op and the member try to agree on some other way to deal with the problem.

This issue assumes that the co-op has the new Model Occupancy By-law (available on the *Ontario's Eviction System* or the *Forms, by-laws and more* page on the Resource Centre on CHF Canada's website, www.chfcanada.coop) or the previous Model Occupancy By-law that most co-ops used. The co-op should check with its lawyer if there are any doubts.

Carefully read the LTB forms for details on how to fill them out and what to do with them. The LTB Forms are on the LTB website (www.ltb.gov.on.ca).

Steps for Co-op

- 1 Issue Notice to Appear**
 - Change the notice if you are using the old By-law. (See Issue 2 of *Evictions: What co-ops need to know*) Put in the number of days for eviction as stated in your By-law.
 - Include any written materials the board is going to use to make the decision.
 - Serve the notice at least 10 days before the meeting or more if your By-law states longer.
 - Serve using the new rules. Allow five more days if mailing.

Steps for Member

- Review the *Notice to Appear*
- Call the Co-op if you have any questions
- Get a lawyer or paralegal if you can get one to go to the board meeting with you
- Prepare for the meeting
 - Find any records or papers you want to take with you
 - Think about what you will say

Steps for Co-op	Steps for Member
<p>2 Board meeting</p> <ul style="list-style-type: none"> • Have a fair board meeting. • Give the member and/or member's representative a chance to say anything related to the problem. • Consider any proposal the member may make about how to cure the problem instead of eviction. • Make the decision in an in-camera meeting. A quorum of directors has to be present. 	<p>Go to the board meeting.</p> <p>Try to convince the board not to evict you or to give you a performance agreement.</p>
<p>3 Board decision to evict</p> <ul style="list-style-type: none"> • Give member the notice of decision. • Change the notice if you are using the old By-law. (See Issue 2 of <i>Evictions: What co-ops need to know</i>) • Deliver within the time stated in your By-law, usually five days. If not possible, it should be delivered in no more than 10 days as in the new Act. 	<p>You will receive a notice of eviction decision from the Co-op. You will receive this even if the board decided you will not be evicted if you meet certain conditions.</p> <p>If the decision is to evict you, decide whether you are going to move out of the co-op by the termination date.</p> <p>If a member appeal is permitted under your co-op's By-law, decide if you want to appeal to a general members' meeting.</p> <p>Give written notice of appeal to the co-op office within seven days (or longer if stated in the co-op By-law).</p> <p>If there is no appeal allowed, you have no membership rights after the termination date stated in the notice. You must still pay your housing charges and take care of your unit but you cannot vote at members' meetings or run for the board.</p>
<p>4 If your Occupancy By-law allows appeals and the member appeals, put the appeal on the agenda for a regular or special members' meeting. The meeting must be at least 14 days after the appeal notice is received.</p>	<p>Go to the appeal meeting.</p> <p>Have a lawyer or paralegal if you can get one.</p> <p>Try to convince the members not to evict you or to give you a performance agreement.</p>
<p>5 Give the member a letter stating the result of the members' meeting. The termination date is the original date in the eviction decision or later if stated in the By-law or members' decision.</p>	<p>If you appealed the eviction decision to the members, you will receive a letter explaining the results of the members' decision from the Co-op and any change in the termination date.</p>
<p>6 If the member's appeal was unsuccessful, determine if the grounds of eviction are within the RTA (See Issue 3 of <i>Evictions: What co-ops need to know</i>). If they are, decide if staff, lawyer or paralegal will do the later steps outlined here.</p>	<p>If your appeal was not successful, decide whether you will move out of the co-op by the termination date.</p> <p>You have no membership rights at that point. You must still pay your housing charges and take care of your unit but you cannot vote at members' meetings or run for the board.</p>

Steps for Co-op	Steps for Member
<p>7 After the termination date stated in the eviction decision, or at the members' meeting if there was an appeal, give the member a notice of termination of occupancy rights under the RTA. Use the correct form. The forms are available on the LTB website (www.ltb.gov.on.ca).</p> <ul style="list-style-type: none"> • Form N4C Non-payment of housing charges • Form N5C Interference, damage or overcrowding beyond municipal standards • Form N6C Illegal act or business or misrepresentation of income for RGI • Form N7C More serious interference or damage • Form N8C Persistent late payment or ceasing to qualify for unit. <p>These forms are similar to landlord-tenant forms with a "C" after the Form number.</p>	<p>If you haven't moved out after the termination date, the co-op will issue you a notice of termination of occupancy rights under the RTA. It will explain how you can avoid being evicted and it will set a new termination date.</p> <p>Decide whether</p> <ul style="list-style-type: none"> • you will move out by this termination date, • you will do the things required to avoid eviction, if applicable, or • wait for a hearing to tell your side of the story at the LTB.
<p>8 In the case of Form N4C, the member has 14 days to pay all arrears. If the member does this, the member is reinstated.</p>	<p>You should pay any arrears that are owed or try to make a payment arrangement with the co-op. This includes the arrears stated in Form N4C and any other housing charges that have become due since then.</p>
<p>9 In the case of Form N5C, the member has the right to correct the situation within seven days (unless step 10 applies). If the member does so, the member is reinstated.</p>	<p>Correct the situation as stated in Form N5C.</p> <p>For damage this includes making the repair or paying the co-op the cost. Notify the co-op in writing what you have done as a correction. Keep a copy of the notice.</p>
<p>10 The member does not have the right to correct the situation for the second Form N5C in the last six months for the same type of thing. In addition, a new Notice to Appear is not needed.</p>	
<p>11 The member does not have the right to correct the situation when any of the other forms are used.</p>	<p>Although you don't have a legal "right" to correct, you can still approach the co-op and try to make a deal about the future. Keep a written record and/or copies of any proposal to the co-op, since it might be helpful in claiming the co-op was unfair. See step 22.</p>
<p>12 If the member does not pay the arrears or correct the situation during the 14- or seven-day periods stated in Forms N4C or N5C, the co-op can file an LTB application the next day.</p>	
<p>13 In all other cases the co-op can file an LTB application right after serving the Form. It is best to wait until the next day. This includes the second Form N5C for the same type of thing in six months.</p>	

Steps for Co-op	Steps for Member
<p>14</p>	<p>If the co-op issued Form N4C for arrears, the member is entitled to pay the arrears anytime until the LTB issues an eviction order.</p> <p>This includes the arrears stated in Form N4C and the co-op's LTB application plus any other housing charges that have become due since then. If the co-op has started an LTB application, it also includes the \$170 application fee.</p>
<p>15 The co-op must use LTB Form C for the application. Follow the instructions on the Form.</p> <ul style="list-style-type: none"> • Attach Schedule C1 for arrears and C2 for anything else.* • Include all documents that the co-op wishes to use to prove its case.** 	<p>If you do not correct the situation or move out by the new termination date, the Co-op will file an application with the LTB for an eviction order.</p>
<p>16 There is no requirement to serve the Form on the member at this stage.</p>	<p>You will not receive a copy of the application until the next step.</p>
<p>17 The LTB will issue a Notice of Hearings. The co-op has to serve the Notice of Hearings and a complete copy of the application on the member as soon as possible. This must be no later than seven days after receiving the Notice of Hearings.</p>	<p>You will get a Notice of Hearings and a copy of the co-op's application. The Notice of Hearings will state dates for a "Case Management Hearing" and a "Merits Hearing." It will be hard to get a postponement to get a lawyer or paralegal, or for them to have time to prepare.</p> <p>Make sure your lawyer or paralegal knows about these hearing dates.</p> <p>If you don't have a lawyer or paralegal, you should get one now.</p>
<p>18</p>	<p>You have to complete a written <i>Response to a Co-op Application</i>. Include all documents that you wish to use. You have to file the Response with the LTB and serve the co-op with a complete copy no later than the date stated in the <i>Notice of Hearings</i>.</p>
<p>19 File a certificate of service on member with the LTB no later than five days after delivery of the <i>Notice of Hearings</i> to the member. Use the form "Certificate of Service—Co-ops" on the LTB website. It must be filed by e-mail.</p>	<p>File a certificate of service on co-op with the LTB no later than five days after delivery of your <i>Response to a Co-op Application</i> to the co-op. Use the form "Certificate of Service—Co-ops" on LTB website. It may be filed by e-mail or in person.</p>
<p>20 At the Case Management Hearing, the Hearing Officer will try to arrange a settlement. If there is no settlement, directions will be given about the Merits Hearing.</p>	
<p>21 Consider a Mediated Settlement Agreement. This can include a clause allowing the co-op to automatically obtain an eviction order if the member does not comply. The member may not like this. If so, it may be better to go ahead with the Merits Hearing.</p>	<p>Try to have a settlement agreement without an automatic eviction order clause. In that case the member and co-op can have a settlement without going to the Case Management Hearing.</p>

Steps for Co-op

Steps for Member

22 Merits Hearing (Co-op and Member).

This is the “main event.” The co-op has to prove its case. Issues are:

- Proving the facts stated by the co-op are right or wrong
- Even if right, proving the facts are serious enough that the member should be evicted
- What is fair? The co-op has to show it would be unfair not to evict***
- Should there be conditions in the order to avoid eviction?
- Should eviction be delayed?

23 If the co-op gets an eviction order, it will be mailed to the co-op. It will have a move-out date.

If the eviction is for arrears, the member is entitled to pay the arrears until the move-out date. This includes the arrears stated in the LTB eviction order plus other housing charges that have become due since the order and the costs stated in the order.

24 If the member is not gone, the co-op can file the eviction order at the Sheriff’s office. You will need to fill out forms and pay a fee.

The Sheriff notifies the member when they have to leave. Usually about a week or so later.

25

If the eviction is for arrears, the member is entitled to pay the arrears until the actual eviction and make a motion to the LTB to cancel the eviction. The member can do this only once during the entire period of membership in the co-op.

Payment has to include the arrears stated in the LTB eviction order plus other housing charges that have become due since the order, the costs stated in the order and what the co-op paid to the Sheriff.

26 The co-op phones the Sheriff’s office if the member has not left and meets the Sheriff at the unit. The Sheriff evicts the member, calling the police if necessary. The co-op usually changes the locks.

The normal steps in an eviction are stated in this issue of *Evictions: What co-ops need to know*, but there are other possible proceedings in connection with an eviction application. Members and the co-op should get advice on these from their lawyers or paralegals.

- * Attach Schedule C3 if the Application is because the member gave notice of withdrawal and did not leave. Attach Schedule C4 if the Application is for breach of a settlement by the member.
- ** The documents would include the Notice to Appear, the ledger, complaint letters, etc. as applicable, the Notice of Eviction Decision, the LTB Termination Form (N4C, N5C, N6C, N7C or N8C) and the Certificate of Service of the LTB Form.
- *** It is not clear how this requirement will work for co-ops. Before eviction law reform, fairness related only to internal co-op eviction procedures. Under the new system, the LTB is not supposed to consider those procedures. But overall co-op behaviour can be important. As an example, in one case the LTB decided it was unfair to evict because of a fight between a tenant’s boyfriend and the building super. The landlord was a social housing provider and it had not responded properly to tenant complaints about the super.

For more information on the eviction system please contact **Diane Miles, Judy Shaw** or **Keith Moyer** at the Ontario Region office at 1-800-268-2537. Or email dmiles@chfcanada.coop, jshaw@chfcanada.coop or kmoyer@chfcanada.coop. In southwestern Ontario, call **Denise McGahan** at 1-800-644-3949, or email dmcgahan@chfcanada.coop.

Warning: Members and co-ops should not use this information instead of legal advice. Situations are different from each other and people understand things differently. This issue of *Evictions: What co-ops need to know* assumes things that may not be true of your co-op or your situation.