Law Society of Ontario | Barreau de l'Ontario

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

CHAIR

Kevin Lundy
Cohen Highley LLP

September 13, 2024

CLE24-009020O-D-WEB

Law Society of Ontario | Barreau de l'Ontario

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Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

CHAIR: **Kevin Lundy,** *Cohen Highley LLP*

September 13, 2024
9:00 a.m. to 11:00 a.m.
Total CPD Hours = 2 h Substantive

Law Society of Ontario

SKU CLE24-00902

Agenda

9:00 a.m.- 9:05 a.m.	**Welcome** Kevin Lundy, *Cohen Highley LLP*
9:05 a.m. – 9:20 a.m.	**Due Diligence – Disclosure and Interim Orders** Dakota Kelly, *Austin Lake Legal Services*
9:20 a.m. – 9:40 a.m.	**What You Need to Know - Notices for Landlord's Own Use** Kristen Jarvis, *Legacy Legal Services LLP*
9:40 a.m. – 10:00 a.m.	**Understand the Difference Between Unauthorized Occupants and Subtenants** Arashdeep Grewal, *AJ Murray Legal Services P.C.*

10:00 a.m. – 10:15 a.m.	**How to Effectively Use the Services of a Dispute Resolution Officer** Emily Van Eerd, *Cohen Highley LLP*
10:15 a.m. – 10:30 a.m.	**Effective Advocacy at the Tribunal: Practical Advice from a Former Member** Kevin Lundy, *Cohen Highley LLP*
10:30 a.m. – 10:50 a.m.	**Developments to Residential Tenancy Law** Robert Barber, *Prevail Paralegal Services Professional Corporation*
10:50 a.m. – 11:00 a.m.	**Question and Answer Session**
11:00 a.m.	**Program Ends**

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Law Society of Ontario | Barreau de l'Ontario

TAB 1

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

Due Diligence – Disclosure and Interim Orders

LTB – Rules of Procedure

How Notice or Document Given

Notice of Video Hearing

Dakota Kelly
Austin Lake Legal Services

September 13, 2024

cpd

Tribunals Ontario
Landlord and Tenant Board
Ontario

Rules of Procedure
Effective September 1, 2021

(Disponible en français)

The Landlord and Tenant Board (LTB) has the authority to make rules to govern its procedures under s. 176 of the *Residential Tenancies Act, 2006* and s. 25.1 of the *Statutory Powers and Procedures Act*. These Rules apply to all proceedings before the LTB.

There are two parts to the LTB's Rules. Part I is the Social Justice Tribunals Ontario (SJTO) Common Rules, which also apply in other tribunals within SJTO. The Common Rules came into effect on October 1, 2013.

Part II is the LTB Specific Rules as of December 1, 2020, which apply only within the LTB.

Both parts of the Rules should be read together.

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I) Social Justice Tribunals Ontario Common Rules

Introduction

Social Justice Tribunals Ontario (SJTO) is a cluster of eight adjudicative tribunals with a mandate to resolve applications and appeals under statutes relating to child and family services oversight, youth justice, human rights, residential tenancies, disability support and other social assistance, special education and victim compensation.

The SJTO is committed to providing quality dispute resolution across the cluster including ensuring that its procedures are transparent and understandable. Identifying common procedures and values across the SJTO and, where appropriate, harmonizing those procedures improves access to justice and fosters consistency in the application of fundamental principles of fairness.

These Common Rules are grounded in the core adjudicative values and principles of the SJTO which govern the work of the cluster. The Common Rules provide a consistent overarching framework of common procedures that will continue to evolve.

How to Use These Rules

1. The SJTO Common Rules apply to all cases in any SJTO tribunal and form part of the rules and

procedures of each tribunal.

2. For more specific rules please refer to the rules and procedures of:
    - Child and Family Services Review Board
    - Criminal Injuries Compensation Board
    - Custody Review Board
    - Human Rights Tribunal
    - Landlord and Tenant Board
    - Ontario Special Education Tribunal - English
    - Ontario Special Education Tribunal - French
    - Social Benefits Tribunal

Part A - Adjudicative Values and Interpretive Principles

Rule A1 - Application

The Common Rules apply to the proceedings of the SJTO. The Common Rules form part of the rules of each SJTO tribunal.

Rule A2 - Definitions

"rules and procedures" includes rules, practice directions, policies, guidelines and procedural directions; "tribunal" means any SJTO tribunal or board.

Rule A3 - Interpretation

A3.1 The rules and procedures of the tribunal shall be liberally and purposively interpreted and applied to:

a. promote the fair, just and expeditious resolution of disputes,
b. allow parties to participate effectively in the process, whether or not they have a representative,
c. ensure that procedures, orders and directions are proportionate to the importance and complexity of the issues in the proceeding.

A3.2 Rules and procedures are not to be interpreted in a technical manner.

A3.3 Rules and procedures will be interpreted and applied in a manner consistent with the *Human Rights Code*.

Rule A4 - Tribunal Powers

A4.1 The tribunal may exercise any of its powers at the request of a party, or on its own initiative, except where otherwise provided.

A4.2 The tribunal may vary or waive the application of any rule or procedure, on its own initiative or on the request of a party, except where to do so is prohibited by legislation or a specific rule.

Rule A5 - Accommodation of *Human Rights Code* - Related Needs

A5.1 A party, representative, witness or support person is entitled to accommodation of *Human Rights Code* - Related Needs by the tribunal and should notify the tribunal as soon as possible if accommodation is required.

Rule A6 - Language

A6.1 Individuals may provide written materials to the tribunal in either English or French.

A6.2 Individuals may participate in tribunal proceedings in English, French, American Sign Language (ASL) or Quebec Sign Language (QSL).

A6.3 A person appearing before the tribunal may use an interpreter. Interpretation services will be provided, upon request, in accordance with tribunal policy.

Rule A7 - Courtesy and Respect

A7.1 All persons participating in proceedings before or communicating with the tribunal must act in good faith and in a manner that is courteous and respectful of the tribunal and other participants in the proceeding.

Rule A8 - Abuse of Process

A8.1 The tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

A8.2 Where the tribunal finds that a person has persistently instituted vexatious proceedings or conducted a proceeding in a vexatious manner, the tribunal may find that person to be a vexatious litigant and dismiss the proceeding as an abuse of process for that reason. It may also require a person found to be a vexatious litigant to obtain permission from the tribunal to commence further proceedings or take further steps in a proceeding.

Rule A9 - Representatives

A9.1 Parties may be self-represented, represented by a person licensed by the Law Society of Upper Canada or by an unlicensed person where permitted by the *Law Society Act* and its regulations and by-laws.

A9.2 Individuals representing a party before a tribunal have duties to both the tribunal and the party they are representing. Representatives must provide contact information to the tribunal and be available to be contacted promptly. Representatives are responsible for conveying tribunal communications and directions to their client. Representatives should be familiar with tribunal rules and procedures, communicate the tribunal's expectations to their client, and provide timely responses to the other parties and the tribunal.

A9.3 Where a representative begins or ceases to act for a client, the representative must immediately advise the tribunal and the other parties in writing, and provide up-to-date contact information for the party and any new representative. Where a representative ceases to act for a client the tribunal may issue directions to ensure fairness to all parties and to prevent undue delay of proceedings.

A9.4 The tribunal may disqualify a representative from appearing before it where the representative's continued appearance would lead to an abuse of process.

Rule A10 - Litigation Guardians

A10.1 This Rule applies where a person seeks to be a litigation guardian for a party. It does not apply where no litigation guardian is required as a result of the nature of the proceeding.

A10.2 Persons are presumed to have the mental capacity to manage and conduct their case and to appoint and instruct a representative.

Litigation Guardian Declarations

A10.3 A litigation guardian for a minor under the age of 18 is required to file a signed declaration in the form designated by the tribunal, confirming:

a. the litigation guardian's consent to serve in this role;
b. the minor's date of birth;
c. the nature of the relationship to the minor;
d. that any other person with custody or legal guardianship of the minor has been provided with a copy of the materials in the proceeding and a copy of the SJTO practice direction on

litigation guardians;
e. that the litigation guardian has no interest that conflicts with those of the person represented;
f. an undertaking to act in accordance with the responsibilities of a litigation guardian as set out in Rule A10.8; and
g. that the litigation guardian is at least 18 years of age and understands the nature of the proceeding.

A10.4 A litigation guardian for a person who lacks mental capacity to participate in the tribunal proceeding must file a signed declaration in the form designated by the tribunal, confirming:
a. the litigation guardian's consent to serve in this role;
b. the nature of the litigation guardian's relationship to the person represented;
c. reasons for believing that the person is not mentally capable of participating in the proceeding;
d. the nature and extent of the disability causing the mental incapacity;
e. that no other person has authority to be the person's litigation guardian in the proceeding;
f. that any person who holds power of attorney or guardianship for the person for other matters has been provided with a copy of the materials in the proceeding and a copy of the SJTO practice direction on litigation guardians;
g. that the litigation guardian has no interest that conflicts with the interests of the person represented;
h. an undertaking to act in accordance with the responsibilities of a litigation guardian as set out in Rule A10.8; and
i. that the litigation guardian is at least 18 years of age and understands the nature of the proceeding.

Naming and Removing a Litigation Guardian

A10.5 Upon the filing of a complete declaration as required by this Rule and unless refused or removed by the Tribunal, the person may act as litigation guardian for the party.

A10.6 The Tribunal will review the declaration and may direct submissions by the parties on whether the litigation guardian should be refused pursuant to Rule A10.7.

A10.7 Upon review of the declaration, or at any later time in the proceeding, the Tribunal may refuse or remove a litigation guardian on its own initiative or at the request of any person because:
a. the litigation guardian has an interest that conflicts with the interests of the person represented;
b. the appointment conflicts with the substitute decision making authority of another person;
c. the person has capacity to conduct or continue the proceeding;
d. the litigation guardian is unable or unwilling to continue in this role;
e. a more appropriate person seeks to be litigation guardian; or
f. no litigation guardian is needed to conduct the proceeding.

Responsibilities of Litigation Guardians

A10.8 A litigation guardian shall diligently attend to the interests of the person represented and shall take all steps necessary for the protection of those interests including:
a. to the extent possible, informing and consulting with the person represented about the proceedings;
b. considering the impact of the proceeding on the person represented;
c. deciding whether to retain a representative and providing instructions to the representative; and
d. assisting in gathering evidence to support the proceeding and putting forward the best possible case to the tribunal.

A10.9 No one may be compensated for serving as a litigation guardian unless provided for by law or a pre-existing agreement.

A10.10 When a minor who was represented by a litigation guardian turns 18, the role of the litigation guardian will automatically end.

II) Landlord and Tenant Board Specific Rules

Rule 1 - General Rules

Definitions

1.1 The definitions contained in the RTA and its regulations apply to these Rules. The following definitions are in addition to those definitions or provide greater clarity. In these Rules:

a. "Associate Chair" means the Associate Chair of the LTB;
b. "CMH" means a Case Management Hearing;
c. "co-op member" is as defined in s.94.1(1) of the RTA;
d. "DRO" means a Dispute Resolution Officer who is an LTB employee assigned to a conduct a mediation, pre-hearing conference or a CMH. A DRO may also be assigned to act as a Hearing Officer.
e. "delivery" means service of a document to a party or the LTB;
f. "file" means file with the LTB and a "filing" is anything that is filed;
g. "holiday" means any Saturday, Sunday or other day on which the LTB's offices are closed;
h. "LTB" means the Landlord and Tenant Board;
i. "landlord" is as defined in s.2(1) of the RTA and for the purposes of these Rules may also include a non-profit housing co-operative;
j. "Member" means a Member of the LTB and includes a Vice-Chair and the Associate Chair;
k. "motion" means a motion in any proceeding or intended proceeding;
l. "non-profit housing co-operative" is as defined in s.2(1) of the RTA;
m. "party" means a landlord, a non-profit housing co-operative, a tenant, a co-op member, and any other person directly affected by an LTB proceeding;
n. "pre-hearing conference" means an in person or telephone meeting of all parties for purposes of case management of an application;
o. "proceeding" means all the processes of the LTB from the filing of an application to its final determination;
p. "RTA" means the *Residential Tenancies Act, 2006*;
q. "Regional Office" means an LTB Regional Office;
r. "regular monthly housing charges" is as defined in s.94.1(1) of the RTA;
s. "rent" is as defined in s.2(1) of the RTA and for the purposes of these Rules may also include regular monthly housing charges in the case of a non-profit housing co-operative;
t. "rental unit" is as defined in s. 2(1) of the RTA and for purposes of these Rules may also include a member unit in the case of a non-profit housing co-operative;
u. "residential complex" is as defined in section 2(1) or section 94.1(1) of the RTA;
v. "SJTO" means the Social Justice Tribunals Ontario;
w. "service" means to deliver or to give a document to anyone or to the LTB in the way required by these Rules; and
x. "tenant" is as defined in s.2(1) of the RTA and for purposes of these Rules may also include a co-op member in the case of a non-profit housing co-operative.
y. “TOP” means the Tribunals Ontario Portal which is the LTB’s case management system.
z. “uploading” means electronically adding a document into the Tribunals Ontario Portal.

Interpretation and Application

1.2 The Associate Chair of the LTB may issue Practice Directions to provide further information about the LTB's practices or procedures.

1.3 Where something is not provided for in these Rules, the LTB may decide what to do by referring to other provisions in these Rules.

Powers of the LTB

1.4 The LTB will decide how a matter will proceed, may reschedule proceedings on its own initiative, may make procedural directions or orders at any time and may impose any conditions that are appropriate and fair.

1.5 Where the RTA requires an affidavit respecting a specified statement or specified information, the LTB will also accept a signed and dated declaration containing the specified statement or specified information provided the declaration confirms the truth of the information or statement and acknowledges that making a false declaration is an offense.

1.6 In order to provide the most expeditious and fair determination of the questions arising in any proceeding the LTB may:

a. waive or vary any provision in these Rules and may lengthen or extend any time limit except where prohibited by legislation or a specific Rule;
b. add or remove parties as it considers appropriate;
c. join applications or hear applications together where it is fair to do so;
d. sever applications or sever parts of an application;
e. conduct any inquiry it considers necessary or request any inspection it considers necessary;
f. direct a party to deliver a notice or document to another party or person in any manner that is appropriate;
g. allow a party to amend any filing;
h. amend an application on its own motion where appropriate, on notice to the parties;
i. view a premise which is the subject of an application;
j. direct parties to attend a CMH or a pre-hearing conference;
k. direct the manner in which a party may communicate with the LTB;
l. direct the order in which issues, including issues the parties consider to be preliminary, will be considered and determined;
m. define and narrow the issues to be decided;
n. question a party or witness;
o. order disclosure of evidence;
p. limit the evidence or submissions on any issue where satisfied there has been full and fair disclosure of all relevant matters;
q. exercise its discretion to permit a party's legal representative to give evidence where appropriate;
r. make interim decisions or orders;
s. dismiss an application which is frivolous and vexatious, has not been initiated in good faith or does not disclose a reasonable cause of action on its own motion and without a hearing;
t. refuse to consider a party's evidence or submissions where the party has not provided the evidence or submissions to the LTB and the other parties as directed by the LTB; and
u. take any other action the LTB considers appropriate in the circumstances.

1.7 In addition to the powers provided for in the RTA, a LTB Hearing Officer may hold a hearing and make an order for:

a. any landlord application about arrears of rent,
b. any application where the applicant does not appear at the time scheduled for the CMH or hearing; or
c. any application where the parties have consented to the terms of the order.

Communication with the LTB

1.8 A party must notify the LTB in writing of any change in their contact information as soon as possible.

1.9 A party may not speak to a Member in the absence of the other parties outside the hearing.

1.10 A party may change their language of participation from English to French or from French to English. The decision to change language of participation must be communicated to the LTB immediately.

1.11 Where a party changes their language of participation after the Notice of Hearing or CMH is issued and, due to the late notice, a bilingual Member or DRO is not available, absent exceptional circumstances an interpreter will be provided and the hearing will proceed.

Calculation of Time

1.12 Where an LTB order or a Rule refers to a number of days this means calendar days.

1.13 When something must be done within a specific number of days, the days are counted by excluding the first day and including the last day.

1.14 When the time for doing anything ends on a holiday as defined in these Rules the thing may be done on the next day that is not a holiday.

1.15 A notice or document may be delivered to a party or person on a holiday and a notice may take effect on a holiday.

1.16 Rules 1.12 to 1.15 may not be waived or varied.

Rule 2 - Fee Waivers

2.1 Requests for a fee waiver must be made using the LTB's Fee Waiver Request Form. A representative licensed by the Law Society of Ontario may complete a Fee Waiver Request Form in TOP based upon information provided to them by the party they are representing.

2.2 Fee waivers will be granted where the requestor meets the requirements set out on the Fee Waiver Request form.

Rule 3 - Service of Documents on a Person or Party

3.1 In addition to methods of service identified in the RTA a document may be served on a person or party, other than a party covered by Rule 3.3, by:

a. hand to the person or to an apparently adult person in the rental unit or member unit;
b. hand to an employee of the landlord with authority for the residential complex to which the document relates or to the manager or co-ordinator of the non-profit housing co-operative exercising authority for the residential complex to which the document relates;
c. 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 rental unit or member unit as long as the person remains in possession of the rental unit or member unit;
d. placing it under the door of a non-profit housing co-operative's head office or business office;
e. regular or registered mail using the address for service provided by the party;
f. courier to party's address or, the case of a non-profit housing co-operative, to its head office or business office;
g. by fax to the party or to a non-profit housing co-operative's head office or business office but only if the document is less than 20 pages or, if it is longer, with the consent of the person receiving it;
h. by email if the person or party receiving it has consented in writing to service by email.
i. uploading it directly into TOP if the person or party receiving it has consented in writing to accept service through TOP.

3.2 A notice of entry under section 27 of the RTA may also be served by posting it on the door of the rental unit.

3.3 In addition to methods of service identified in the RTA a document may be served on a tenant or former tenant no longer in possession of a rental unit, by:

a. 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 tenant or former tenant's residence;
b. sending the document(s) by courier to the address where the tenant or former tenant resides; or
c. by email if:
    i. during the tenancy the tenant or former tenant had consented in writing to service by email; and
    ii. if it can be proven that the contents actually came to the attention of the tenant or former tenant.

3.4 A party may ask the LTB to permit an alternative method of service including service by email or service on the party's representative. The request may be made prior to the hearing using an LTB approved form or at the hearing. A request to use an alternative method to serve a tenant or former tenant no longer in possession of a rental unit with an application and notice of hearing must be made at least 40 days before the hearing.

Service by Email

3.5 Parties may consent in writing at any time to service by email.

3.6 Consent to service by email may be revoked at any time by giving notice in writing to the person or party.

3.7 Where a party does not consent to service of a document by e-mail, the LTB may permit the document be served by e-mail on such terms as are just.

Certificate of Service

3.8 Where required by these Rules or the LTB directs, service of a document must be confirmed by completing a Certificate of Service signed by the person who served the document and filing it with the LTB within 5 days of service.

When Documents are Served

3.9 A document is considered served on the:

a. fifth day after mailing;
b. date on the fax confirmation receipt when sent by fax;
c. day after it was given to the courier when sent by courier, or if that day is a holiday, the next day that is not a holiday;
d. day it was sent when sent by email;
e. day it was given to the person when delivered by hand.
f. day it was uploaded into TOP

Rule 4 - Filing with the LTB

4.1 A document may be filed with the LTB:

a. by delivering it in person to any LTB Regional Office or to a ServiceOntario Centre that accepts service on behalf of the LTB;
b. by mail or courier to the LTB Regional Office responsible for the area in which the residential complex referred to in the document is located.
c. where the file can be accessed through TOP, by uploading it directly into TOP; or
d. by fax or by email if:
    i. it relates to an application; and
    ii. it does not contain any payment or credit card information. Any required payment must be made through the online payment portal and a copy of the payment receipt

must accompany the fax or email.

4.2 A document sent to the LTB by fax or email that does not comply with Rule 4.1(d) will not be accepted by the LTB.

4.3 A document filed with the LTB by uploading it directly into TOP may be signed by typing the name of the person or party on the document.

4.4 Where the LTB permits an application to be filed using TOP, any related Notice of Termination, affidavit, or Certificate of Service must be also uploaded at the time of filing.

4.5 If the Notice of Termination, affidavit or Certificate of Service cannot be uploaded at the same time as the application is filed using TOP, they must be filed with the LTB within 5 calendar days of filing. Failure to file these documents in time may result in administrative dismissal of the application.

4.6 An application by a non-profit housing co-operative, and any document, other than the payment form, which relates to the application must be filed by email to co-opprocessingLTB@ontario.ca. Payment must be made through the online payment portal and a copy of the payment receipt must accompany an application.

4.7 When filing documents by email the sender must include the following information:

a. the sender's name, address, telephone number, and email address; and
b. the name and telephone number of a person to contact in the event of problems receiving the email and/or attachments.

4.8 A document is considered filed on the:

a. day it is filed in person at any LTB Regional Office or ServiceOntario Centre that accepts service on behalf of the LTB;
b. fifth day that is not a holiday after mailing;
c. day received when filed by fax. The sender is responsible for ensuring the fax transmission is complete;
d. day received when filed by email;
e. day after it was given to the courier when filed by courier or on the next day that is not a holiday.
f. day it is uploaded into TOP.

4.9 Any document filed with the LTB, except for documents filed with an application, must include the following information:

a. names of the parties to the application;
b. LTB file number or numbers where available; and
c. the name and contact information of the person filing the document and, where applicable, the name of his or her representative and the representative's contact information.

4.10 In addition to the information required in the RTA a landlord who files an application under section 69 of the RTA based on a notice of termination given under section 48, 49 or 50 of the RTA shall, in the application, indicate:

a. Any LTB file number related to each notice of termination;
b. The intended activity for a notice of termination given under section 50.

Rule 5 - Service of Application and Notice of Hearing

5.1 The LTB will serve the Notice of Hearing together with the application, motion, or request on all parties unless the Rules or RTA require otherwise or the LTB exercises its discretion to order a party to serve. The applicant must give a copy of all their evidence, such as supporting documents and pictures, directly to the other parties. The LTB will not serve evidence that the parties intend to rely upon at the hearing. The LTB may serve an application or a Notice of Hearing by email in appropriate circumstances.

5.2 The LTB may exercise its discretion to order the party filing an application, motion or request to serve a copy of it together with the Notice of Hearing and any attached information sheets, on all other parties in the following circumstances:

a. the application asks for an above guideline rent increase;
b. the application asks to vary the amount of a rent reduction;
c. the application has been amended;
d. the LTB has granted the party's request to shorten the time for service of the application, motion or request;
e. the issues in dispute on the application, motion or request are time sensitive;
f. the LTB is unable to serve the application, motion or request to the other parties; or
g. the LTB determines that an order for service by a party is fair, just and expeditious.

Time for LTB Ordered Service
Highly Time Sensitive Applications

5.3 A tenant's application alleging illegal lockout must be served **at least 48 hours** before the hearing date set in the Notice of Hearing.

5.4 A tenant's application alleging denial of access to possessions after eviction by the Sheriff must be served **at least 5 days** before the hearing date set in the Notice of Hearing.

5.5 An application to end the tenancy and evict for any of the grounds listed below:

a. impairing safety,
b. illegal act involving drugs,
c. wilful damage,
d. interference with reasonable enjoyment in small building where landlord lives in the building, or
e. failure to vacate superintendent unit,

must be served **at least 5 days** before the hearing date set in the Notice of Hearing.

Written Hearings: Service Within 20 Days

5.6 Where the LTB issues a notice of written hearing for an:

a. application to vary the amount of a rent reduction;
b. application for a rent reduction for municipal taxes;
c. application for an above guideline rent increase due to increased municipal taxes or utilities; or
d. any other application where the LTB directs a written hearing

the applicant must serve a copy of the application and the notice of written hearing on each respondent no later than 20 days after the LTB issues the notice of written hearing.

AGI, Care Home Transfer or Vary Rent Reduction: Service Within 30 Days

5.7 An application for any of the grounds listed below:

a. above guideline rent increase which will proceed as an oral hearing,
b. transfer of a Care Home tenant, or
c. varying the amount of a rent reduction

must be served **at least 30 days** before hearing date set in the Notice of Hearing.

All Other Applications

5.8 A landlord’s Application to Collect Money a Former Tenant Owes and the Notice of Hearing must be served **at least 30 days** before the hearing date set in the Notice of Hearing.

5.9 Where the LTB directs service of any other application it must be served **at least 15 days** before the hearing date set in the Notice of Hearing.

5.10 Where a landlord has filed an application under section 226 for a review of a work order issued by an inspector appointed by a local municipality, the landlord must serve the local municipality with a copy of the application and Notice of Hearing **at least 15 days** before the hearing date set in the Notice of Hearing

Motions

5.11 A motion by a:

a. tenant asking to set aside an ex parte order;
b. tenant asking to void an eviction order for arrears;
c. landlord asking to set aside an order voiding an eviction; or,
d. landlord asking to increase rent above the guideline because repairs, replacements or other work have been completed

must be served **at least 48 hours** before the time set in the Notice of Hearing.

5.12 All other motions must be served as soon as possible and, in any event, **at least 15 days** before the hearing date set in the Notice of Hearing.

Requests

5.13 A request to re-open a mediated settlement or a consent order issued under s. 206.1 of the RTA must be served **at least 15 days** before the hearing date set in the Notice of Hearing.

5.14 Unless the LTB orders otherwise, service of all other Requests must be done as soon as possible and, in any event **at least 15 days** before the hearing date set in the Notice of Hearing.

Certificate of Service

5.15 Where a party is ordered or required to serve an application and Notice of Hearing, a completed Certificate of Service signed by the person who served the application must be filed with the LTB within **five days** after the application is served unless the LTB amends the time for filing.

5.16 Where a landlord has served an Application to Collect Money a Former Tenant Owes and Notice of Hearing, a completed Certificate of Service signed by the person who served the application must be filed with the LTB **at least 20 days** before the hearing date set in the Notice of Hearing.

Failure to Serve

5.17 Where a party fails to serve as ordered the LTB may:

a. proceed with the hearing if satisfied there will be no prejudice to any party;
b. adjourn the hearing; or,
c. dismiss the application, motion or request.

Rule 6 - Refusal to Accept or Continue to Process an Application

Failure to Pay Fine, Fee or Costs

6.1 An applicant who fails to pay a fine, fee or costs to the LTB may not file a new application until the fine, fee or costs owed to the LTB have been paid unless the issues raised in the new application are urgent.

6.2 For the purposes of this Rule, applications not considered to be urgent include, but are not limited to:

a. an application for termination and eviction for rent arrears;
b. an application for payment of rent arrears;
c. an application for termination and eviction for non-payment of housing charges; and
d. an application about maintenance if the tenant is no longer in possession of the rental unit.

6.3 Where an application is filed contrary to this Rule and the issues are not urgent, it will be stayed on notice to the parties that all amounts owing must be paid to the LTB within 15 days of the date of the

notice. If the applicant fails to pay all amounts owing by that date, the application will be discontinued and any mediation or hearing dates will be cancelled.

6.4 Where an application is filed contrary to this Rule and the hearing has not been completed or an order has not been issued, it will be stayed on notice to the parties that all amounts owing must be paid to the LTB within 15 days of the date of the notice. If the applicant fails to pay all amounts owing by that date the application will be discontinued unless doing so would be inappropriate in the particular circumstances.

6.5 The application fee will not be refunded if an application is discontinued for failure to pay a fine, fee or costs.

Other Circumstances

6.6 A landlord's application for compensation for arrears, damage or misrepresentation of income will not be accepted unless the landlord confirms the tenant is in possession of the rental unit.

6.7 An application to terminate a tenancy and evict a tenant for non-payment of rent will not be accepted on or before the termination date in the notice of termination.

6.8 An application to terminate a tenancy and evict a tenant based on a notice to terminate the tenancy pursuant to section 62, 64 or 67 will not be accepted if filed before the seven day remedy period in the notice of termination has expired.

6.9 An application to terminate a tenancy and evict a tenant will not be accepted if filed more than 30 days after the termination date in the notice, unless it is an application based on the tenant's failure to pay rent.

6.10 An application which is incomplete because it does not include documents required by the RTA, regulations or Rules will not be accepted.

Rule 7 - LTB Proceeding

Form of Proceedings

7.1 The LTB may conduct all or part of any pre-hearing conference, CMH or hearing in person, in writing, by telephone or other electronic means, as it considers appropriate and as may be permitted in the circumstances.

7.2 An objection to an electronic proceeding must be in writing and explain why an electronic hearing will cause the party significant prejudice. The notice of electronic hearing will include the date by which an objection must be filed with the LTB.

7.3 An objection to a written hearing must be in writing and explain why there is good reason for not holding a written hearing. The notice of written hearing will include the date by which an objection must be filed with the LTB. The LTB may hold a written hearing unless it is satisfied that there is a good reason not to.

7.4 An objection to a written hearing will not be considered for an application under section 132 or 133 of the RTA or an application solely under paragraph 1 of subsection 126 (1) of the RTA.

Summons to Witnesses

7.5 A party may ask the LTB to issue a summons for a witness by completing and filing a Request for LTB to Issue a Summons form. The request must be made as soon as the party becomes aware a summons is required. Where a party is represented by a lawyer or paralegal the lawyer or paralegal must prepare and submit the summons with the request.

7.6 Service of the summons and payment of the attendance money is the responsibility of the party who requested the summons.

Public Proceedings

7.7 LTB hearings are open to the public, except where:

a. it is necessary to close some or all of a hearing to the public to prevent serious risk to the proper administration of justice and reasonably alternative measures will not prevent the risk, and

b. the benefits of closing some or all of a hearing to the public outweigh the harm to the rights and interests of the parties and the public.

7.8 A party may request that some or all of a hearing be closed to the public. Absent exceptional circumstances the request must be in writing, give reasons in support of the request, be delivered to all other parties and be filed with the LTB as soon as the need for the request arises.

7.9 Where the LTB decides to close some or all of a hearing to the public it may make any orders it considers appropriate.

Recording Proceedings

7.10 Where the LTB records a hearing, the recording will form part of the record and any party may request a copy of the recording on payment of the required fee. Requests must be made within ten years of the date of the hearing.

7.11 On notice to the LTB a party may retain a court reporter to create a transcript of the hearing. The LTB is not responsible for the cost of the reporter. If the transcript is used in the hearing a complete copy must be provided to the LTB and the other parties at the party's expense.

7.12 A person seeking authorization from the LTB in accordance with section 29 of the *Statutory Powers Procedure Act* to take any form of photograph, audio or visual recording of a hearing, or transmit visual or aural representations of a hearing must make the request before the hearing begins.

Rule 8 - Pre-Hearing Conferences

8.1 The LTB may exercise its discretion to order parties to attend a pre-hearing conference where it considers necessary.

8.2 The purpose of the pre-hearing conference is to:

a. identify and simplify the issues in dispute;

b. identify agreements on facts or evidence;

c. set dates by which any steps in the proceeding are to be taken or begun;

d. estimate the length of hearing; and

e. make any other agreements or directions that are appropriate.

Rule 9 - Case Management Hearings

9.1 The LTB may require parties to attend a CMH in any application before it.

9.2 The CMH may be used to mediate some or all the issues in dispute and the Mediation Rule applies to a mediation conducted as part of a CMH. A representative who attends the CMH on behalf of a party must have the authority to participate in all aspects of the CMH including the ability to agree to a settlement or to obtain instructions about settlement during the CMH.

9.3 If the parties do not consent to mediate or cannot settle all the issues in dispute, the LTB may make case management orders to:

a. identify and simplify the issues in dispute;

b. identify agreements on facts or evidence;

c. set dates by which any steps in the proceeding are to be taken or begun;

d. estimate the length of hearing; and

e. assist in the just and most expeditious disposition of the application.

Failure to attend a CMH

9.4 An application may be dismissed as abandoned if the applicant fails to attend a CMH and there are no exceptional circumstances to explain the absence.

9.5 Where a respondent fails to attend the CMH and there are no exceptional circumstances to explain the absence, the respondent may be deemed to accept all of the facts and allegations in an application, the hearing may proceed without further notice to the respondent and the LTB may decide the application based on the evidence before it.

Rule 10 - L1/L9 Hearings

10.1 A landlord who applies for an order to:

a. evict a tenant for non-payment of rent and to collect rent the tenant owes; or,

b. collect the rent the tenant owes,

must complete three copies of the "L1/L9 Information Update as of the Hearing Date" form containing complete and accurate information about the tenancy and any arrears of rent owed as of the day of the hearing. A copy must be provided to the tenant, if present at the hearing, and the LTB.

10.2 Where the L1/L9 hearing is conducted as an electronic or written hearing, unless the LTB orders or directs otherwise, the landlord must provide an L1/L9 update form to the LTB and each tenant at least 5 days before the hearing.

10.3 The LTB may refuse to proceed with the hearing until the L1/L9 update form is completed.

Rule 11 - Application for Above Guideline Rent Increase

Response Where Written Hearing

11.1 Where the LTB issues a Notice of Written Hearing in an above guideline rent increase application, any response must be filed no later than 50 days after the date on the Notice. The response need not be delivered to the applicant or other respondents. The applicant is responsible for determining whether responses have been filed with the LTB.

11.2 The response must identify:

a. the issues in dispute and provide the respondent's submissions on them;

b. any remedy or relief requested; and

c. attach any documents that support the respondent's position.

11.3 The applicant may file a reply to a response no later than 65 days after the date on the Notice.

Disclosure

11.4 An applicant claiming under s.126(1)1 or 3 must be prepared to disclose the rent for each rental unit in the residential complex and the date that rent was established for a new tenant or was last increased for an existing tenant.

11.5 An applicant claiming under s. 126(1)2 must file a detailed list of rents with the application.

Rule 12 - Non-Profit Housing Co-operatives

Application

12.1 The complete application must provide information requested in each section of the application and include all relevant facts not contained in the Notice of Termination (where applicable) on which the applicant intends to rely.

12.2 The application must include a signed declaration from a person with authority to bind the applicant certifying that the respondent's occupancy rights were terminated in accordance with the requirements

of s.171.8 of the *Co-operative Corporations Act*.

Response to the Application

12.3 A respondent must complete a response responding to all allegations in the application and including any additional facts and issues on which the respondent intends to rely.

12.4 The response must be filed with the LTB and delivered to the applicant as soon as possible, but no later than the date specified in the Notice of Hearings.

12.5 Where no response is filed, the respondent may be deemed to have accepted all of the facts and allegations in the application and the LTB may decide the application based only on the material before it.

Rule 13 - Mediation and Dispute Resolution

13.1 The LTB may offer mediation and dispute resolution services to parties. Parties may agree to mediate some or all of the issues in dispute.

13.2 Mediation is required in care home transfer applications.

13.3 A party need not attend the mediation provided the party has a representative and the representative:

a. has filed a written agreement signed by the party giving the representative the authority to mediate and to agree to a settlement; or
b. is a lawyer or paralegal licensed to practice in Ontario and confirms the party has authorized them to mediate and to agree to a settlement; or
c. confirms the party has authorised the representative to mediate and agrees to a settlement and the other participating parties and the DRO agree to proceed with the mediation in these circumstances.

13.4 Where parties have settled, or are close to a settlement of the issues between them without the assistance of a DRO, they may request a DRO facilitate a mediated agreement.

Confidentiality

13.5 Anything said during a mediation or communications made during Online Dispute Resolution, including any offer to settle, is confidential and may not be used before the LTB or in any other proceedings. Communications made during Online Dispute Resolution may be viewed by LTB staff if a party reports inappropriate conduct by another party, the parties ask for the assistance of a DRO or the parties inform the LTB they have reached an agreement. Communications made during Online Dispute Resolution may not be viewed by an LTB Member.

13.6 DROs shall not reveal information obtained in mediation to any other person including a Member. DROs cannot be compelled to give testimony or produce documents in any civil proceeding with respect to matters that come to their attention in the course of their duties including mediation. This Rule cannot be waived.

Mediated Agreements

13.7 Where a DRO has facilitated settlement the parties may agree to resolve the application through a mediated agreement and ask the LTB to close its file on that basis. A mediated agreement is not an LTB order.

13.8 Where a party has paid money into the LTB, the DRO will direct payment out of the funds as required by the mediated agreement.

13.9 Where parties agree to amend an application as part of a mediated agreement the application will be considered amended.

13.10 Except where the parties agree otherwise, copies of mediated agreements are confidential, the property of the parties and will not be retained by the LTB.

Request to Re-open

13.11 A party to an application that has been resolved by a mediated agreement may ask the LTB to re-open the application if:

a. the other party does not meet a term of the mediated agreement;
b. the party making the request lacked the capacity to enter into the mediated agreement; or
c. during the mediation, the other party coerced them or deliberately made false or misleading representations which had a material effect on the agreement.

13.12 A request to re-open an application resolved by a mediated agreement must be in writing, provide the facts or reasons supporting the request, and attach a copy of the mediated agreement. The request to re-open must be filed with the LTB no later than one year after the mediated agreement was signed unless the parties agree to a longer time.

13.13 A request to re-open cannot be made for an application resolved by an order issued by the LTB, except for an application resolved by an order issued pursuant to s.206(1) of the RTA.

Rule 14 - Consent Orders

14.1 Where all parties consent, some or all of the terms of a settlement agreement may be made part of an order.

14.2 If the LTB is satisfied that the terms of the agreement are consistent with the RTA it may issue a consent order as requested by the parties or another more appropriate order based on the parties' agreement.

Rule 15 - Amending Applications

15.1 A request to amend an application before the hearing must be:

a. in writing;
b. served with the amended application to all other parties; and
c. filed with LTB with the amended application and a completed Certificate of Service.

15.2 Where the request to amend requires the LTB to revise the Notice of Hearing, the applicant must serve the revised Notice of Hearing to all other parties and file a Certificate of Service within 7 days of receiving the revised Notice.

15.3 The request to amend will be decided at the hearing after considering:

a. whether the amendment was requested as soon as the need for it was known;
b. any prejudice a party may experience as a result of the amendment;
c. whether the amendment is significant enough to warrant any delay that may be caused by the amendment;
d. whether the amendment is necessary and was requested in good faith; and
e. any other relevant factors.

15.4 The LTB may exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.

Rule 16 - Request to Extend or Shorten Time

16.1 Except where an extension of time is prohibited by the RTA, the LTB may consider a request to extend or shorten time for doing anything if the request is:

a. in writing;
b. provides reasons in support of the request; and
c. filed as required by these Rules.

16.2 Absent exceptional circumstances, a request to extend time to file a:

a. landlord's motion to set aside an order made under s.74(6);
b. tenant's motion to set aside an order made under s.77(4);
c. tenant's motion to set aside an order made under s.78(6) or (7);
d. landlord's application for a determination of whether grounds for refusing consent to an assignment of a site for a mobile home are reasonable;
e. landlord's request for a review of a work order;
f. request to amend an order; and
g. request to review a decision or order

must be filed together with the motion, application or request.

16.3 If an extension of time is granted where the document was not filed with the request the LTB will direct that the document be filed, and any filing fee be paid, by a specific date failing which the document will be refused.

16.4 The following factors may be considered in deciding requests to extend or shorten any time requirement under the RTA or these Rules:

a. the length of the delay, and the reason for it;
b. any prejudice a party may experience;
c. whether any potential prejudice may be remedied;
d. whether the request is made in good faith; and
e. any other relevant factors.

16.5 A request to extend or shorten time may be decided without requesting submissions from other parties to the application.

16.6 Where a request to extend or shorten time is denied, the requesting party may not make further requests to extend or shorten the same time requirement, unless there has been a significant change in circumstances.

16.7 If the request to extend or shorten time is granted, the document is deemed to be received on the date on which the party filed it.

Rule 17 - Withdrawing an Application

17.1 Where an application is being heard in writing, it may be withdrawn without consent at any time before the day on which the applicant's written submissions are due. The applicant must notify the LTB and the other parties of the withdrawal as soon as possible.

17.2 An applicant may withdraw an application without consent at any time before the oral or electronic hearing begins unless it is for an order that the landlord, superintendent or agent of the landlord has harassed, obstructed, coerced, threatened or interfered with the tenant during the tenant's occupancy of the rental unit in which case it cannot be withdrawn without the consent of a Member or DRO. The applicant must notify the LTB and the other parties of the withdrawal as soon as possible.

17.3 An oral or electronic hearing begins when parties first come before the Member or DRO and this includes an appearance on a preliminary matter. After an oral or electronic hearing begins the application cannot be withdrawn without the consent of the Member or DRO.

Rule 18 - Severing an Application

18.1 When an application is created as the result of severing another application, any procedural requirements or issues that were resolved in the original application continue to apply to the severed application, unless the LTB decides otherwise.

Rule 19 - Disclosure and Evidence

19.1 Unless the LTB has directed or ordered otherwise, all parties to a matter that has been scheduled for a

CMH or a hearing must provide the other parties and the LTB with a copy of all documents, pictures and other evidence that the party intends to rely upon at least 7 days before the CMH or hearing . The evidence must be provided to the other parties using one of the methods of service identified in the RTA or Rule 3.

19.2 Where a party has provided evidence in accordance with Rule 19.1, the other parties must provide any responding documents, pictures and other evidence that the party intends to rely upon to the other parties and the LTB at least 5 days before the scheduled CMH or hearing.

19.3 At any time before the hearing has been completed, a party may be directed or ordered to disclose and exchange documents or any other material relevant to the proceeding unless the LTB is satisfied the document is privileged.

19.4 Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:

1. a written description of each issue the tenant intends to raise; and
2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

19.5 A tenant who fails to provide the LTB and other parties with a written description of each issue they intend to raise at the hearing as required in Rule 19.4 shall not be permitted to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears unless the LTB is satisfied that the tenant could not comply with the requirements.

19.6 Where a tenant has provided a landlord with issues and evidence in accordance with Rule 19.4, the landlord must provide the other parties and the LTB with any responding documents, pictures and other evidence the Landlord intends to rely upon at least 5 days before the scheduled hearing.

19.7 A party who fails to comply with Rule 19 or an order or direction for disclosure may not rely on the evidence that was not disclosed as directed or ordered, unless otherwise ordered.

Rule 20 - Paying Money Into and Out of the LTB

Rent Arrears: Payments Made Before an Order is Issued

20.1 If, before an order is issued, a tenant pays money to the LTB which is at least the amount required to discontinue the application, the LTB shall:

a. direct that the amount that would be required to discontinue the application be paid out to the landlord,
b. direct that any excess be paid to the tenant, and
c. order that the application is discontinued without holding a hearing.

Rent Arrears: Payments Made Before an Eviction Order is Enforceable

20.2 If, after an order is issued but before it becomes enforceable, a tenant pays the LTB at least the amount required to void the order, the LTB will:

a. direct that the amount required to void the order be paid to the landlord,
b. direct that any excess be paid to the tenant, and
c. issue a Notice confirming that the eviction order based on arrears of rent is void.

20.3 If, after an order is issued but before it becomes enforceable, a tenant pays the LTB less than the amount required to void the order and the tenant does not file a motion to set aside the order, the LTB will:

a. direct the money be returned to the tenant, once the order has become enforceable, and
b. issue a Notice to the parties confirming that the order is not void.

20.4 If, after an order is issued but before it becomes enforceable, a tenant pays the LTB less than the amount required to void the order and files a motion to set aside the order, the LTB will, when issuing

its order, direct payment of the money be returned to the tenant.

Rent Arrears: Payments Made After Eviction Order is Enforceable

20.5 If, after an order becomes enforceable, a tenant pays the LTB the amount required to void the order and files a motion to set aside the order the LTB will:

a. direct the amount required to void the order be paid to the landlord; and
b. direct any excess be paid to the tenant.

20.6 If, after an order becomes enforceable, a tenant pays less than the amount required to void the order, the LTB will direct any money paid to the LTB be returned to the tenant.

20.7 If a tenant pays at least the amount specified for enforcement costs in a set aside order by the date in the order, the LTB will:

a. issue a Notice confirming that the eviction order based on arrears of rent is void;
b. direct that the amount that would be required to void the order be paid to the landlord; and
c. direct that any excess shall be paid to the tenant.

20.8 Where a tenant is ordered to pay an amount to the LTB for enforcement costs by a specified date and fails to do so the LTB will:

a. issue a Notice confirming the amount was not paid and lifting the stay of the set aside order; and
b. direct that any money paid in to the LTB be paid out to the tenant.

Payment In on Maintenance Applications

20.9 A tenant who has filed an application about maintenance may ask for the LTB's consent to pay future rent into the LTB until the application is resolved. Unless the request is made at the hearing, it must be in writing, and must specify:

a. the amount of rent the tenant is required to pay and the date rent payments are due under the tenancy agreement;
b. the amount of rent the tenant wishes to pay in and the rent period(s) or portion(s) of rent period(s) covered by that amount; and
c. the reasons why the tenant believes the LTB should allow the request.

20.10 Where the request is made before the hearing starts it will be decided without seeking submissions from the other parties. If the request is denied, the LTB will not consider any further requests to pay in before the hearing begins.

20.11 The Member may consider submissions from the other parties when deciding a request to pay in made at the hearing and will issue an interim order if the request is allowed.

20.12 Where an interim order for payment in is made the Member will direct payment out at the time of issuing a final order, or, if the application is resolved by mediation, the DRO will direct payment out in accordance with the Rules.

Rule 21 - Rescheduling and Adjournments

Rescheduling

21.1 Parties may agree to ask the LTB to reschedule a CMH or hearing prior to the scheduled date. The request to reschedule must be on consent of all parties and received by the LTB as soon as reasonably possible and **not less than 5 business days** before the scheduled date. Consent is required even where the notice of hearing and application have not been delivered to the responding parties.

21.2 A request to reschedule a CMH or hearing received by the LTB less than 5 business days prior to the scheduled date or not on consent of all the parties may be granted if a Member or Hearing Officer is satisfied that it was not reasonably possible for the party making the request to comply with Rule 21.1.

21.3 The party requesting rescheduling must file a list of the dates each party and any representative is unavailable to attend a CMH or hearing in the three-month period after the date of the scheduled date.

21.4 Parties must contact the LTB to learn whether the request is granted and, if granted, the date of the rescheduled CMH or hearing. If the request is denied, the CMH or hearing will proceed on the scheduled date.

21.5 If the LTB receives a request to reschedule a CMH, the LTB may instead of granting the request cancel the CMH and schedule a hearing.

21.6 A request to reschedule a CMH or a hearing for an application made under section 126 of the RTA will only be considered in exceptional circumstances.

Adjournments

21.7 A party may request an adjournment at the beginning of a CMH or hearing.

21.8 A CMH or hearing may be adjourned at the discretion of a Hearing Officer or Member where satisfied that an adjournment is required to permit an adequate hearing to be held. Relevant factors the LTB may consider in deciding the request include:

a. the reason for the adjournment and position of the parties;
b. the issues in the application;
c. any prejudice that may result from granting or denying the request;
d. the history of the proceeding including other adjournments or rescheduling; and
e. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

21.9 A request to adjourn a CMH or a hearing for an application made under section 126 of the RTA will only be considered in exceptional circumstances.

Rule 22 - Orders and Reasons

22.1 A copy of the LTB's order and any reasons will be sent to each party by:

a. mail to the last known address of each party;
b. mail to the representative of the party; or
c. any other method directed or permitted by the LTB.

22.2 A party may request written reasons for an order either:

a. orally at the hearing; or
b. in writing within 30 days after the order which does not contain reasons is issued, unless the time for requesting written reasons has been extended in accordance with these Rules.

22.3 Where reasons are necessary for purposes of deciding a request for review, the Member who issued the order under review will provide reasons promptly without knowledge of the basis or content of the review request.

22.4 Where the LTB receives a request for reasons for an order under appeal the Member who issued the order will provide reasons promptly without knowledge of the basis or content of the appeal.

22.5 Rule 22 cannot be waived.

Rule 23 - Costs

Ordering the Application Fee as Costs

23.1 If the applicant is successful, the LTB may order the respondent to pay the application fee to the applicant as costs.

Ordering Another Party's Costs

23.2 A member may exercise discretion to order a party to pay another party's:

a. representation/preparation fees; and

b. other out-of-pocket expenses.

Where the LTB orders a party to pay the representation/preparation fees incurred by another party, these fees shall not exceed $100 per hour for the services of a paid representative to a maximum of $700.

23.3 A party who engages in unreasonable conduct which causes undue delay or expense may be ordered to pay costs to another party.

Ordering LTB Costs

23.4 A party or a paid representative may be ordered to pay the LTB for its costs of a proceeding. Hearing costs will not exceed $100 per hour to a maximum of $700.

23.5 The LTB will not order a paid representative to pay its costs unless those costs result from the paid representative's conduct.

Rule 24 - Amending Orders

24.1 A party to an order or any person directly affected by the order may request the LTB to correct a clerical error in an order within 30 days from the date the order or decision is issued.

24.2 The LTB may amend an order to correct a clerical error on its own initiative without seeking submissions from the parties or holding a hearing.

24.3 If an order is amended to correct a clerical error, the LTB may also amend or update other provisions of the order as necessary.

24.4 On its own initiative the LTB may stay an order pending the resolution of a request to amend the order or revoke a stay at any time without obtaining submissions from any party or holding a hearing.

Requests to Amend an Order

24.5 A request to amend an order must:

a. be in writing and signed by the person making the request;

b. include the LTB file number, the address of the rental unit, member unit or residential complex, the requestor's name and complete contact information; and

c. identify precisely the amendment requested.

24.6 A party may ask the LTB to stay its order pending a decision on the request to amend. The request to stay must be in writing and identify the prejudice the party will experience if the order is not stayed.

Rule 25 - Voiding or Staying an Order

25.1 The party who files a set aside motion must immediately take a copy of the motion, the Notice of Hearing and Stay to the Court Enforcement Office. This Rule does not apply to a set aside motion filed by a landlord under s.74(9).

25.2 If the LTB issues a notice or an order which confirms that an eviction order is void, the tenant must immediately take a copy of the notice or order to the Court Enforcement Office.

25.3 If the LTB issues an order staying an earlier order, the party who asked to stay the earlier order must immediately take a copy of the order staying it to the Court Enforcement Office.

Rule 26 - Review of Orders

Requests to Review an Order

26.1 Any party may request review of any order which makes a final determination of the party's rights. For these purposes an interim order may contain a final determination of rights. A person who is directly affected by a final order may also request a review of an order.

26.2 The parties to the request to review are the parties to the order, the person requesting the review, and any other person added to the proceedings by the LTB.

26.3 The LTB may review an order on its own initiative where it considers appropriate and will issue directions to the parties with respect to the conduct of the review. A party or a directly affected person cannot request an LTB initiated review of an order.

Time for Making a Request

26.4 A request to review an order must be made within 30 days of the order being issued.

26.5 A request to review an amended order must be made within 30 days of the amended order being issued.

26.6 If the request is made more than 30 days after the order or amended order was issued the requestor must also file a request for an extension of time and give reasons explaining the delay.

Form and Contents

26.7 A request to review an order must be:

a. in writing;
b. signed by the requestor or the requestor's representative; and
c. accompanied by the required fee.

26.8 A request to review an order must provide:

a. the order number;
b. the address of the rental unit or member unit;
c. the requestor's name, address and telephone number;
d. if the requestor is not a party to the order, explain the requestor's interest in the order;
e. sufficient information to support a preliminary finding of an alleged serious error or an explanation why the requestor was not reasonably able to participate in the hearing;
f. an explanation of how the order should be changed;
g. if seeking to stay the order, an explanation why a stay is necessary and any prejudice or harm may result if a stay is not ordered;
h. information about any appeal of the order; and
i. where there is an appeal of the order, the requestor's position on whether the LTB should lift the stay resulting from the appeal.

Preliminary Review of Request

26.9 The LTB will conduct a preliminary review of the request and may exercise its discretion to:

a. dismiss the request because it was not filed in time;
b. extend the time for making the request;
c. dismiss the request; or
d. direct a review hearing of some or all of the issues raised in the request and, where appropriate, make any interim orders.

Stays and Lifting Stays

26.10 A party may request a stay of the order as part of the request to review or at any point in the review process. A request for a stay must be in writing and describe any prejudice resulting from a refusal to grant the stay.

26.11 The LTB may stay or lift a stay of the order at any point in the review process on the request of a party or on its own initiative, without seeking submissions or holding a hearing. The LTB may include conditions in its order staying or lifting a stay.

Review Hearing

26.12 The review hearing may be conducted in person, in writing, by telephone or other electronic means, as the LTB considers appropriate.

26.13 Any Member, including the Member whose order is the subject of the request to review, may be assigned to conduct the review hearing.

26.14 If the request to review is dismissed the LTB will lift any stay and confirm the order under review.

26.15 If the request to review is granted the reviewing Member will identify the issues to be re-heard. The Member may include issues not identified in the request but which the Member finds may amount to a serious error in the order.

Re-Hearing

26.16 Unless otherwise directed, the re-hearing will begin immediately after the request to review is granted. Parties must be prepared to proceed with re-hearing.

26.17 Following the re-hearing the LTB may confirm, vary, suspend or cancel the order, and lift any stay if necessary.

Limits on Further Requests for Review

26.18 The LTB will not consider a further request to review the same order or to review the review order from the same requesting party.

26.19 A party or directly affected person may request a review of the same order on different grounds provided the requestor's interests in the proceeding are different from those of the first requestor.

Withdrawing a Request to Review

26.20 If the LTB has made an interim order following the preliminary review or has begun hearing the request to review, the requestor must obtain the LTB's consent to withdraw the review request.

Appendix A: ServiceOntario Centres

City/Town	Address
Atikokan	108 Saturn Avenue
Aurora	50 Bloomington Road West
Aylmer	615 John Street North
Bancroft	50 Monck Street
Barrie	34 Simcoe Street
Belleville	199 Front Street, Unit 109
Blind River	62 Queen Avenue

City/Town	Address
London	100 Dundas Street
Manitouwadge	40 Manitou Road
Marathon	52 Peninsula Road, Centre Block Suite 105
Milton	2800 Highpoint Drive, 2nd Floor
Minden	12698 Highway 35
Moosonee	34 Revillion Road
New Liskeard	280 Armstrong Street

Brampton	1 Gateway Boulevard
Brockville	7 King Street West
Chapleau	190 Cherry Street, Main Floor
Cochrane	143 Fourth Avenue
Cornwall	72014th Street West, Unit 2
Dryden	479 Government Road
Elliot Lake	50 Hillside Drive North
Espanola	148 Fleming Street, Suite 2
Fort Frances	922 Scott Street
Geraldton	208 Beamish Avenue West
Goderich	38 North Street
Gore Bay	35 Meredith Street
Guelph	1 Stone Road West
Hamilton	119 King Street West, 6th Floor
Hawkesbury	179 Main Street East, Suite C
Hearst	613 Front Street
Huntsville	207 Main Street West
Ignace	Highway 17 and Highway 599
Iroquois Falls	33 Ambridge Drive Main Floor
Kapuskasing	122 Government Road West
Kemptville	10 Campus Drive
Kenora	220 Main Street South
Kingston	1201 Division Street
Kirkland Lake	10 Government Road East
Kitchener	30 Duke Street West, 2nd Floor
Nipigon	5 Wadsworth Drive
North Bay	447 McKeown Avenue, Unit 111
Ottawa	110 Laurier Avenue West
Owen Sound	1400 First Avenue West, Unit 2
Parry Sound	7 Bay Street
Pembroke	400 Pembroke Street East
Peterborough	330 Water Street
Rainy River	334 Fourth Street
Red Lake	227 Howey Street
Renfrew	316 Plaunt Street South
Sarnia	150 Christina Street North
Sault Ste. Marie	420 Queen Street East
Simcoe	50 Frederick Hobson V.C Drive, Unit 201
Sioux Lookout	62 Queen Street
St. Catharines	301 St. Paul Street East
Stratford	5 Huron Street
Sturgeon Falls	94 King Street, Unit 8
Sudbury	199 Larch Street, Suite 300
Terrace Bay	1004 Hwy 17, Main Floor
Thunder Bay	114-435 S. James St.
Timmins	The 101 Mall, 38 Pine St N, Suite 110
Toronto (Central)	777 Bay Street, Suite M212, Market Place
Tweed	255 Metcalf Street
Wawa	48 Mission Road
Whitby	590 Rossland Road East
Windsor	400 City Hall Square East, Unit 205

Lindsay	322 Kent Street West

Appendix B: Witness Fees

Rule 53.04(4) of the Rules of Civil Procedure

Attendance money actually paid to a witness who is entitled to attendance money, to be calculated as follows:

Item Amount

1. Attendance allowance for each day of necessary attendance: $50
2. Travel allowance, where the hearing or examination is held:
    a. in a city or town in which the witness resides, $3.00 for each day of necessary attendance;
    b. within 300 kilometres of where the witness resides, 24¢ a kilometre each way between his or her residence and the place of hearing or examination;
    c. more than 300 kilometres from where the witness resides, the minimum return airfare plus 24¢ a kilometre each way from his her residence to the airport and from the airport to the place of hearing or examination.
3. Overnight accommodation and meal allowance, where the witness resides elsewhere than the place of hearing or examination and is required to remain overnight, for each overnight stay: $75

1.8 A party must notify the LTB in writing of any change in their contact information as soon as possible.

1.9 A party may not speak to a Member in the absence of the other parties outside the hearing.

1.10 A party may change their language of participation from English to French or from French to English. The decision to change language of participation must be communicated to the LTB immediately.

1.11 Where a party changes their language of participation after the Notice of Hearing or CMH is issued and, due to the late notice, a bilingual Member or DRO is not available, absent exceptional circumstances an interpreter will be provided and the hearing will proceed.

Calculation of Time

1.12 Where an LTB order or a Rule refers to a number of days this means calendar days.

1.13 When something must be done within a specific number of days, the days are counted by excluding the first day and including the last day.

1.14 When the time for doing anything ends on a holiday as defined in these Rules the thing may be done on the next day that is not a holiday.

1.15 A notice or document may be delivered to a party or person on a holiday and a notice may take effect on a holiday.

1.16 Rules 1.12 to 1.15 may not be waived or varied.

Rule 2 - Fee Waivers

2.1 Requests for a fee waiver must be made using the LTB's Fee Waiver Request Form. A representative licensed by the Law Society of Ontario may complete a Fee Waiver Request Form in TOP based upon information provided to them by the party they are representing.

2.2 Fee waivers will be granted where the requestor meets the requirements set out on the Fee Waiver Request form.

Rule 3 - Service of Documents on a Person or Party

3.1 In addition to methods of service identified in the RTA a document may be served on a person or party, other than a party covered by Rule 3.3, by:

a. hand to the person or to an apparently adult person in the rental unit or member unit;
b. hand to an employee of the landlord with authority for the residential complex to which the document relates or to the manager or co-ordinator of the non-profit housing co-operative exercising authority for the residential complex to which the document relates;
c. 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 rental unit or member unit as long as the person remains in possession of the rental unit or member unit;
d. placing it under the door of a non-profit housing co-operative's head office or business office;
e. regular or registered mail using the address for service provided by the party;
f. courier to party's address or, the case of a non-profit housing co-operative, to its head office or business office;
g. by fax to the party or to a non-profit housing co-operative's head office or business office but only if the document is less than 20 pages or, if it is longer, with the consent of the person receiving it;
h. by email if the person or party receiving it has consented in writing to service by email.
i. uploading it directly into TOP if the person or party receiving it has consented in writing to accept service through TOP.

3.2 A notice of entry under section 27 of the RTA may also be served by posting it on the door of the rental unit.

3.3 In addition to methods of service identified in the RTA a document may be served on a tenant or former tenant no longer in possession of a rental unit, by:

a. 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 tenant or former tenant's residence;
b. sending the document(s) by courier to the address where the tenant or former tenant resides; or
c. by email if:
    i. during the tenancy the tenant or former tenant had consented in writing to service by email; and
    ii. if it can be proven that the contents actually came to the attention of the tenant or former tenant.

3.4 A party may ask the LTB to permit an alternative method of service including service by email or service on the party's representative. The request may be made prior to the hearing using an LTB approved form or at the hearing. A request to use an alternative method to serve a tenant or former tenant no longer in possession of a rental unit with an application and notice of hearing must be made at least 40 days before the hearing.

Service by Email

3.5 Parties may consent in writing at any time to service by email.

3.6 Consent to service by email may be revoked at any time by giving notice in writing to the person or party.

3.7 Where a party does not consent to service of a document by e-mail, the LTB may permit the document be served by e-mail on such terms as are just.

Certificate of Service

3.8 Where required by these Rules or the LTB directs, service of a document must be confirmed by completing a Certificate of Service signed by the person who served the document and filing it with the LTB within 5 days of service.

When Documents are Served

3.9 A document is considered served on the:

a. fifth day after mailing;
b. date on the fax confirmation receipt when sent by fax;
c. day after it was given to the courier when sent by courier, or if that day is a holiday, the next day that is not a holiday;
d. day it was sent when sent by email;
e. day it was given to the person when delivered by hand.
f. day it was uploaded into TOP

Rule 4 - Filing with the LTB

4.1 A document may be filed with the LTB:

a. by delivering it in person to any LTB Regional Office or to a ServiceOntario Centre that accepts service on behalf of the LTB;
b. by mail or courier to the LTB Regional Office responsible for the area in which the residential complex referred to in the document is located.
c. where the file can be accessed through TOP, by uploading it directly into TOP; or
d. by fax or by email if:
    i. it relates to an application; and
    ii. it does not contain any payment or credit card information. Any required payment must be made through the online payment portal and a copy of the payment receipt

How notice or document given

191 (1) A notice or document is sufficiently given to a person other than the Board,

(a) by handing it to the person;

(b) if the person is a landlord, by handing it to an employee of the landlord exercising authority in respect of the residential complex to which the notice or document relates;

(c) if the person is a tenant, subtenant or occupant, by handing it to an apparently adult person in the rental unit;

(d) by leaving it in the mail box where mail is ordinarily delivered to the person;

(e) if there is no mail box, by leaving it at the place where mail is ordinarily delivered to the person;

(f) by sending it by mail to the last known address where the person resides or carries on business; or

(g) by any other means allowed in the Rules. 2006, c. 17, s. 191 (1).

Same, tenant or former tenant no longer in possession

(1.0.1) Despite subsection (1), a notice or document is sufficiently given to a tenant or former tenant who is no longer in possession of a rental unit,

(a) by handing it to the tenant or former tenant;

(b) by sending it by mail to the address where the tenant or former tenant resides;

(c) by handing it to an apparently adult person where the tenant or former tenant resides; or

(d) by any other means allowed in the Rules. 2020, c. 16, Sched. 4, s. 29.

Same, Part V.1

(1.1) Despite subsection (1), for the purposes of Part V.1, a notice or document is sufficiently given to a person other than the Board,

(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;

(e) by sending it by mail to the last known address where the person resides or carries on business;

(f) if the person is a non-profit housing co-operative,

(i) by delivering it personally or sending it by mail to,

(A) the head office of the co-operative as shown on the records of the Ministry of Finance, or

(B) the co-operative's business office, or

(ii) by handing it to a manager or co-ordinator of the co-operative exercising authority in respect of the residential complex, as defined in Part V.1, to which the notice or document relates; or

(g) by any other means allowed in the Rules. 2013, c. 3, s. 42.

When notice deemed valid

(2) A notice or document that is not given in accordance with this section shall be deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended within the required time period. 2006, c. 17, s. 191 (2).

Mail

(3) A notice or document given by mail shall be deemed to have been given on the fifth day after mailing. 2006, c. 17, s. 191 (3).

(Disponible en français)

NOTICE OF VIDEO HEARING

Under section 174 of the *Residential Tenancies Act, 2006*

The Landlord filed an application with the Landlord and Tenant Board (LTB). A Hearing has been scheduled to consider the merits of the application. Please refer to the information below and log into the Tribunals Ontario Portal at www.tribunalsontario.ca/en/tribunals-ontario-portal/ to access your file information.

File Number: [redacted]

Parties to the Application:
Applicant (Landlord) Parties
[redacted]

Respondent (Tenant) Parties
Cidalia M Macedo

Concerning Rental Unit Address: [redacted] YORK, ON, [redacted]

Hearing Type: L2 - N12

Hearing Date: September 11, 2024

Hearing Time: 01:00 PM EST

Hearing Location: Virtual

Join the video hearing by clicking on this link:
[redacted]

If the link does not open, you can also type it into your internet browser.

If you do not have access to the internet, you can join the hearing by phone. Call toll free 855-703-8985 or local 647-374-4685. When you call, you will be asked for a Meeting ID. Enter the following number: 821-7335-6176#

Hearing Day Instructions:

1. **Join the video hearing 30 minutes before the hearing time noted above to confirm your attendance.**
2. **Be ready to stay the whole day. There are many other hearings scheduled at the same time as your hearing, and your hearing may be later in the day.**

TECHNICAL ASSISTANCE:

Before your hearing: To learn more about how to join and what to expect at your video hearing, watch our online Zoom video guides and review the information on our Videoconferencing webpage at www.tribunalsontario.ca/en/videoconferencing/. You should also review the Zoom information sheet sent with your Notice of Video Hearing or you can visit the LTB webpage: www.tribunalsontario.ca/ltb/hearing-resources/.

During your hearing: If you have technical issues joining your hearing on Zoom, you can email LTBHearingSupport@ontario.ca, or call 416-212-9064 (toll-free 866-769-7865). Staff will help you join your hearing. When you call for support, you will be asked to leave a voice message explaining the issue you are experiencing and provide your contact phone number. Staff will call you back promptly.

The support line will be monitored between 8:30 a.m. and 4:30 p.m., Monday to Thursday, and from 8:30 a.m. to 2 p.m. on Friday.

THIS HEARING WILL DEAL WITH A POSSIBLE EVICTION FROM THE RENTAL UNIT

It is important for you to join this hearing on time. If you are late, or do not attend, the hearing may take place without you.

The best way to communicate with the LTB is by email at **ltb@ontario.ca**. Be sure to check your email account, including your "Junk Email" folder, regularly. You can view the documents, evidence and submissions for this file on the Tribunals Ontario Portal at www.tribunalsontario.ca/en/tribunals-ontario-portal/.

If you are the Applicant and you would like to try to resolve this matter faster, you can invite the Respondent to the Tribunals Ontario Portal to participate in online negotiation and get the assistance of a Dispute Resolution Officer for mediation. You can use the portal to check the details and/or add any extra evidence that may help resolve the situation and reach an agreement.

WHAT MAY HAPPEN IF YOU DO NOT ATTEND THE HEARING:

If you cannot attend the hearing, you should give someone written permission to represent you and to participate on your behalf. Be sure to inform the LTB by email in advance.

If you are the Landlord and you do not attend the hearing or send a representative, your application may be dismissed without any further notice.

If you are the Tenant and you do not attend the hearing or send a representative, the LTB may hold the hearing without you and make a decision based on only the Landlord's evidence.

WHAT YOU SHOULD DO IF YOU HAVE EVIDENCE TO PRESENT:

1. All parties must give each other a complete copy of all the evidence they want to use during the hearing as soon as possible but **at least 7 days** before the hearing.
2. All parties must also upload their evidence to the Tribunals Ontario Portal at www.tribunalsontario.ca/en/tribunals-ontario-portal/ **at least 7 days** before the hearing. To upload your evidence, log into Tribunals Ontario Portal, choose the file number and select 'Documents, Evidence & Requests'. From this page, click '+ Add file documents' then select 'Evidence and Submissions' from the dropdown menu.
3. If you are unable to access Tribunals Ontario Portal, you can email your evidence to the LTB. Send the email **at least 7 days** before the hearing to ltb.evidence@ontario.ca. Emails CANNOT exceed 35 MBs in size. In the subject line of your email include: the word "EVIDENCE"; your FILE Number; and hearing date.
4. If after you receive the other party's evidence you decide that you want to submit more evidence in response, you must provide a copy of your reply evidence to the other party and to the LTB. Do this as soon as possible, but **at least 5 days** before the hearing. You can upload your reply evidence to the Tribunals Ontario Portal or email it to the LTB.
5. If you do not provide the other party and the LTB with a copy of your evidence **at least 7 days** before the hearing (or 5 days for reply evidence) you may not be allowed to use that evidence during the hearing.

REPRESENTATIVES or LEGAL ASSISTANCE:

If you are a tenant and need legal advice, contact your local community legal clinic. To find a legal clinic in your area, contact Legal Aid Ontario at 1-800-668- 8258. Please seek legal advice before your hearing.

Tenant Duty Counsel has created an online registration system to request legal assistance if you have a scheduled hearing. You can access it at www.tdc.acto.ca. Tenant Duty Counsel is a service provided by Legal Aid Ontario and is not affiliated with the LTB.

If you are a small-scale landlord, you may be able to get assistance from the Landlord's Self-

Help Centre. Call 416-504-5190/1-800-730-3218 or visit www.landlordselfhelp.com/. The Landlord's Self-Help Centre is funded by Legal Aid Ontario and is not affiliated with the LTB.

You may be represented by a lawyer or paralegal licensed by the Law Society of Ontario or by an unlicensed person where permitted by the *Law Society Act* and its regulations and by-laws. For more information refer to the Practice Direction on Representation on the LTB website at www.tribunalsontario.ca/ltb/rules-practice-directions-guidelines/.

IF YOU BELIEVE THAT A VIDEO HEARING WILL CAUSE YOU SIGNIFICANT PREJUDICE:

You may email and/or contact the LTB in writing and explain why you believe that having the hearing by video will cause you significant prejudice. You must send your written explanation to the LTB within 7 days of receiving this notice of hearing.

If the LTB finds that having the hearing by video will cause you significant prejudice, the LTB may change the hearing format. If you do not receive a notice informing you that the hearing has been rescheduled to a different format, the video hearing will take place at the date and time noted in this notice.

Be sure to include your file number on any correspondence with the LTB.

FOR MORE INFORMATION:

If you have any questions about the application or the hearing, you may:

- visit Navigate Tribunals Ontario website at www.navigatetribunalsontario.ca
- visit the LTB website at www.tribunalsontario.ca
- call the LTB contact centre at: 416-645-8080 or toll free at 1-888-332-3234
- email the LTB at: ltb@ontario.ca

Be sure to include your file number on any correspondence to the LTB Office:

Landlord and Tenant Board
15 Grosvenor Street, Ground Floor
Toronto, Ontario M7A 2G6

Ce document est disponible en français. Pour obtenir la version française, et obtenir une audience en français, veuillez soumettre la demande de service en français dûment complétée (www.tribunalsontario.ca/cli/formulaires/), ou communiquer avec nous au 416-645-8080 ou sans frais au 1-888-332-3234.

Law Society of Ontario | Barreau de l'Ontario

TAB 2

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

Landlord's Personal Use
What You Need to Know (PPT)

Kristen Jarvis
Legacy Legal Services LLP

September 13, 2024

cpd

LANDLORD'S PERSONAL USE

WHAT YOU NEED TO KNOW

Kristen Jarvis
Legacy Legal Services LLP

What is an N12?

Unlike most landlord notices, the N12 is not about the Tenant's conduct; rather the Landlord or Purchaser's need to move back into the unit.

Who can move in?

- The landlord
- The landlord's child(ren) or spouse's children
- The landlord's spouse
- The landlord's parents or spouse's parents
- Caregivers of the landlord, their child(ren), spouse or parents
- All the same applies for a purchaser of the home

WHATS IMPORTANT ON THE NOTICE?

The following items are vital when drafting the notice to ensure an accurate notice.

- What date is the rent paid?
- The correct spelling of all tenants on the lease
- The complete address (using Canada Postal Code Look up for the most accurate address)
- Termination date is at least 60 days with the termination date being the last day of the rental period.
- Who is moving in?

***A property owned by a Corporation cannot issue a Notice for personal use

WHEN CAN YOU GIVE THE NOTICE?

While the Notice can be given during the fixed term lease period – it is important to note that the termination date **must** be at the end of the fixed term at the earliest point – the termination cannot be during a fixed term lease.

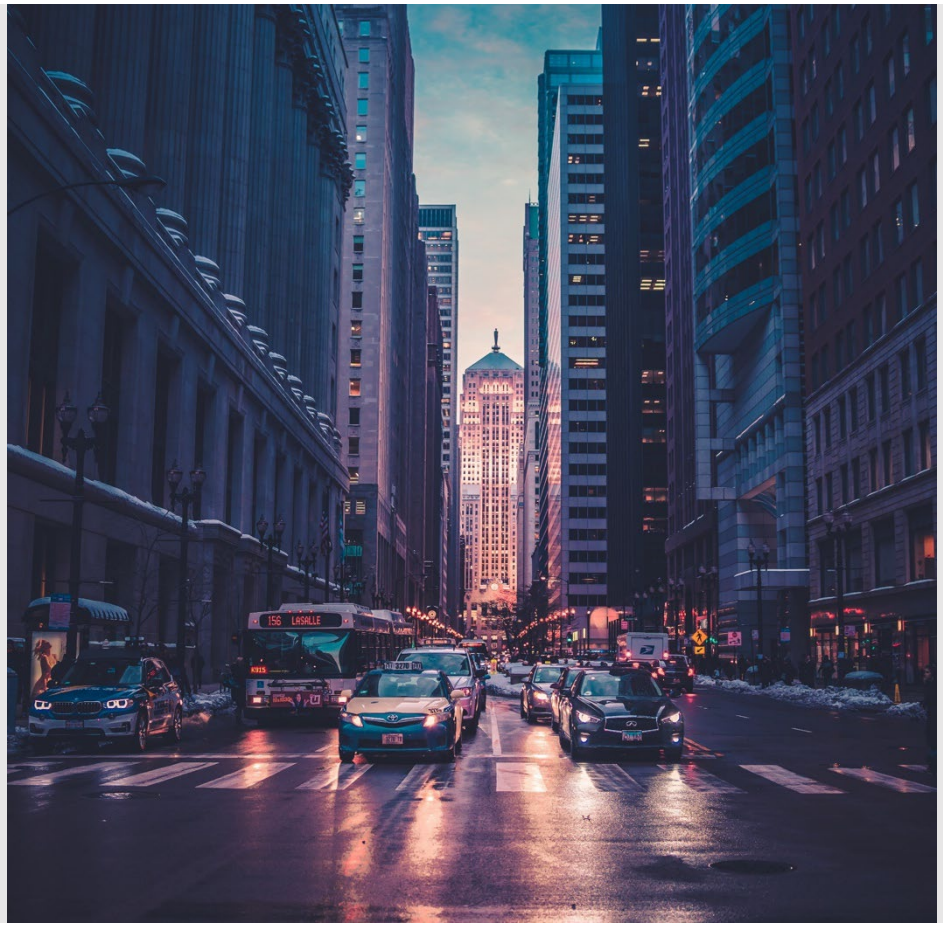
If the Notice is being served on behalf of a purchaser, a firm acceptance of an Agreement of Purchase and Sale must be complete. If the sale falls through with this buyer, a new notice must be served with a new termination date.

WHAT IS YOUR REQUIREMENTS?

WITH THE NOTICE

The landlord is required to provide to the tenant the completed N12 Notice of Termination for personal use as well as compensation equivalent to one month's rent.

This compensation is due by the termination date on the Notice.



WHEN FILING THE L2

The party filing the L2 Application requires the following documents:

- A copy of the N12 notice served on the tenants
- A completed Certificate of Service with the method of service clearly indicated. (Reminder for service dates to be considered and if a lease provides for alternate service)
- An Affidavit or declaration completed by the party moving into the unit.
- A copy of the compensation provided to the tenant

WHEN IS THE RIGHT TIME?

The L2 Application must be filed within 30 days of the termination date listed on the Notice, beyond that period, the notice is no longer valid and will be dismissed at a hearing.

While not required, it is my practice to serve the N12 with the compensation and file the L2 shortly after.

While some tenants will vacate the unit by the termination date, playing wait and see denies the landlord at least two months that the matter could have been filed and waiting in queue for a hearing date. If the tenants vacate in the meantime, you can withdraw the Application before the Board.

WHAT IS REQUIRED ON THE AFFIDAVIT?

The Affidavit must indicate who is moving in, their relationship to the landlord (or purchaser), that they intend to live in the home for a period of at least 12 months and that they are making this declaration for no improper purpose and must be filed with the Application – this cannot be delayed.

- **Application based on certain notice**
- **Affidavit under s. 72 (1)**
- **71.1** (1) A landlord who, on or after the day subsection 11 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, files an application under section 69 based on a notice of termination given under section 48 or 49 shall file the affidavit required under subsection 72 (1) at the same time as the application is filed. 2020, c. 16, Sched. 4, s. 11 (1).

"Residential Tenancies Act, 2006, S.O. 2006, c. 17", (19 November 2018), online: *Ontario.ca* <https://www.ontario.ca/laws/statute/06r17#BK99>.

AT THE HEARING

If the tenant does not vacate and a hearing is required, the landlord and the party moving into the unit will be required to testify as to their need for the unit.

Be prepared to show the genuine need and that the notice was given in good faith and for no improper purpose.

Expect that if the hearing is proceeding contested that the tenant will argue any of the following points

- That the landlord has attempted to illegally raise the rent
- That the landlord tried to kick them out to sell the place for more
- That the notice was given because the tenant attempted to assert their rights
- That the tenant requires the property for their own use more than the landlord does.
- That the notice was not issued in good faith

How do you show genuine need?

- Do they have community ties to the neighborhood?
- Are they moving from one city to this city for a job opportunity? – Provide the job offer
- Is this property larger than their current home?
- Does it allow for easier living (no stairs, ground floor, etc.)
- Is the home closer to places that are important to their family (schools, churches, work, etc.)
- If someone other than the landlord is moving in, are they paying rent? Is there an agreed upon amount? If not, are they taking over fees or is the property in exchange for something (taking care of their parents, kids)

THANK YOU

KRISTEN@LEGACYPARALEGAL.CA

HTTPS://LEGACYPARALEGAL.SERVICES/EN/

Law Society of Ontario | Barreau de l'Ontario

TAB 3

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

Understanding the Difference Between Unauthorized Occupants and Subtenants (PPT)

Arashdeep Grewal
AJ Murray Legal Services P.C.

September 13, 2024

cpd

LANDLORD AND TENANT BOARD REFRESHER FOR LAWYERS AND PARALEGALS 2024

Understanding the Difference Between Unauthorized Occupants and Subtenants

01

Understanding the difference between unauthorized occupants and subtenants.

02

Understanding the legal implications for landlords and tenants

03

Review of the LTB process and steps to address these issues.

DEFINITION OF UNAUTHORIZED OCCUPANTS SECTION 100 (1) OF THE *RESIDENTIAL TENANCIES ACT*, 2006, S.O. 2006, C. 17 (THE ACT)

- Unauthorized Occupants: *An individual residing in the rental unit without the landlord's knowledge or consent*
- Not listed on the lease agreement
- Tenant on the lease has vacated or transferred the occupancy of a rental unit to a person in a manner other than by an assignment authorized under section 95 or a subletting authorized under section 97 of the Act.
- No legal rights under the lease

DEFINITIONS OF SUBTENANT SUBSECTION 2 (1) OF THE ACT

- Subtenant
  - A person who rents part or all of the rental unit from the original tenant (head tenant), with the landlord's formal approval.
  - Conditions for a subtenancy to exist under the Residential Tenancies Act
    - ✓ Head tenant must vacate the unit
    - ✓ Give one or more other persons the right to occupy the rental unit for a term ending on a specified date. This must be before the end of the tenant's term or period
    - ✓ Retain the right to resume occupancy of the rental unit at the end of the tenancy
    - ✓ Obtain the consent of the landlord

- **Unauthorized Occupant:** Does not require formal landlord consent but violates the lease and RTA.
- **Subtenant:** Requires landlord's written consent. The head tenant maintains the original lease obligations.

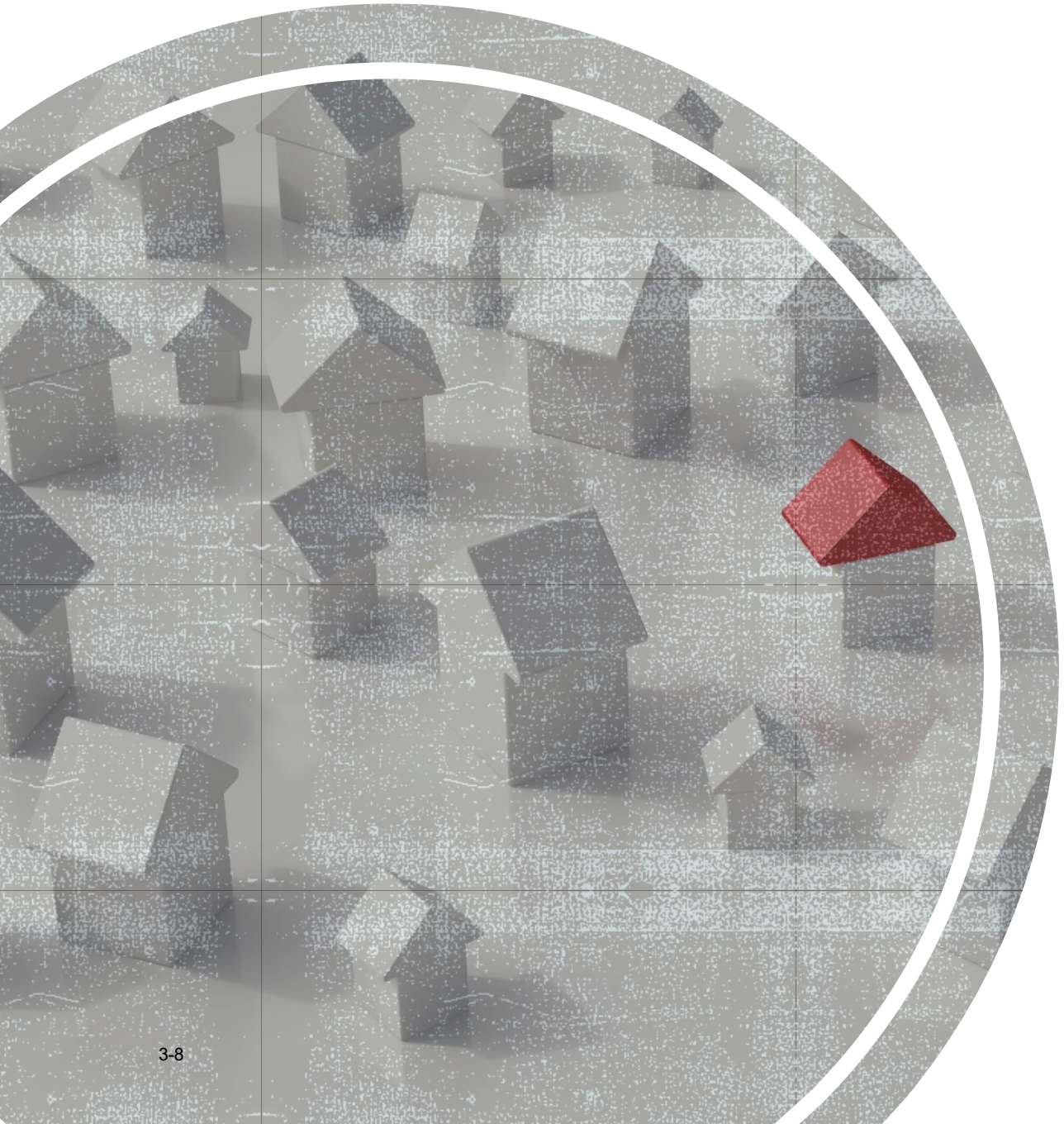
- **Rights & Liabilities:**
  - **Unauthorized Occupant:** No legal rights under the RTA;
  - **Subtenant:** Assumes occupancy rights as per the sublease but has no direct legal relationship with the landlord. The head tenant is responsible pursuant to the lease agreement

LANDLORD'S RIGHTS REGARDING UNAUTHORIZED OCCUPANTS SECTION 100 OF THE ACT

- Application about a Sublet or an Assignment (A2)
- Landlord must apply to the LTB within 60 days after discovering the unauthorized occupant.
- What happens after 60 days?

SUBLETTING PROCESS AND GUIDELINES

- **RTA Subletting (Section 97):**
  - Tenants have the right to sublet with landlord consent.
  - **Landlord's Response Timeline:** The landlord must respond to a subletting request within **14 days**. Failure to respond within this period means consent is deemed given.
  - **Reasonable Grounds for Refusal:** Landlords can only refuse for legitimate reasons such as the subtenant's inability to pay rent, but not arbitrarily.
- **Tenant's Obligation:**
  - The original tenant remains responsible for rent, utilities, and any damages to the unit during the subtenancy period.



LEGAL CONSEQUENCES FOR SUBLETTING WITHOUT CONSENT

- **For Tenants (Head Tenants):**
  - Subletting without the landlord's consent is a breach of the lease, giving the landlord grounds for termination.
  - Tenants are liable for all actions of the subtenant, including any property damage or unpaid rent.
- **For Subtenants:**
  - Subtenants have no legal standing with the landlord .
  - They can be evicted without notice if the head tenant violates the lease.

THANK YOU

Arashdeep Grewal

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www.ajmurraylaw.ca

Law Society of Ontario | Barreau de l'Ontario

TAB 4

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

How to Effectively Use the Services of a Dispute Resolution Officer (PPT)

Emily Van Eerd
Cohen Highley LLP

September 13, 2024

cpd

HOW TO EFFECTIVELY USE THE SERVICES OF A DISPUTE RESOLUTION OFFICER

Emily Van Eerd, Cohen Highley LLP

WAYS TO USE THE SERVICES OF A DISPUTE RESOLUTION OFFICER

1

Before the Hearing

- Pros:
  - Parties can discuss resolution at their own pace
  - Parties have control over the terms of the resolution
  - Parties can avoid the cost and time associated with preparing and attending a hearing
  - Parties have an additional chance to resolve before the day of the hearing
  - Parties have more leniency regarding the scope of the terms
- Cons:
  - Scheduling can be difficult to coordinate to put any resolution on record

2

At the Hearing

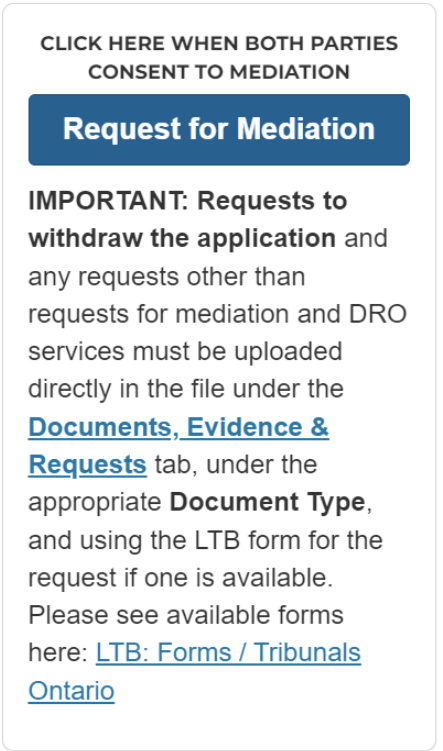
- Pros:
  - Parties can avoid the potential for an adjournment
  - Parties have control over the terms of the resolution
  - Parties can avoid the cost of waiting to be heard and proceeding to hearing
  - Parties can, at minimum, discuss agreed upon facts to shorten hearing time
  - Parties have more leniency regarding the scope of the terms
- Cons:
  - Should lengthy mediation efforts not produce a resolution, the parties risk adjournment of the matter

BEFORE THE HEARING

Utilizing the ODR Tool in the Tribunals Ontario Portal: How To

- To initiate resolution discussions, parties can reach out using the ODR tool in the Portal

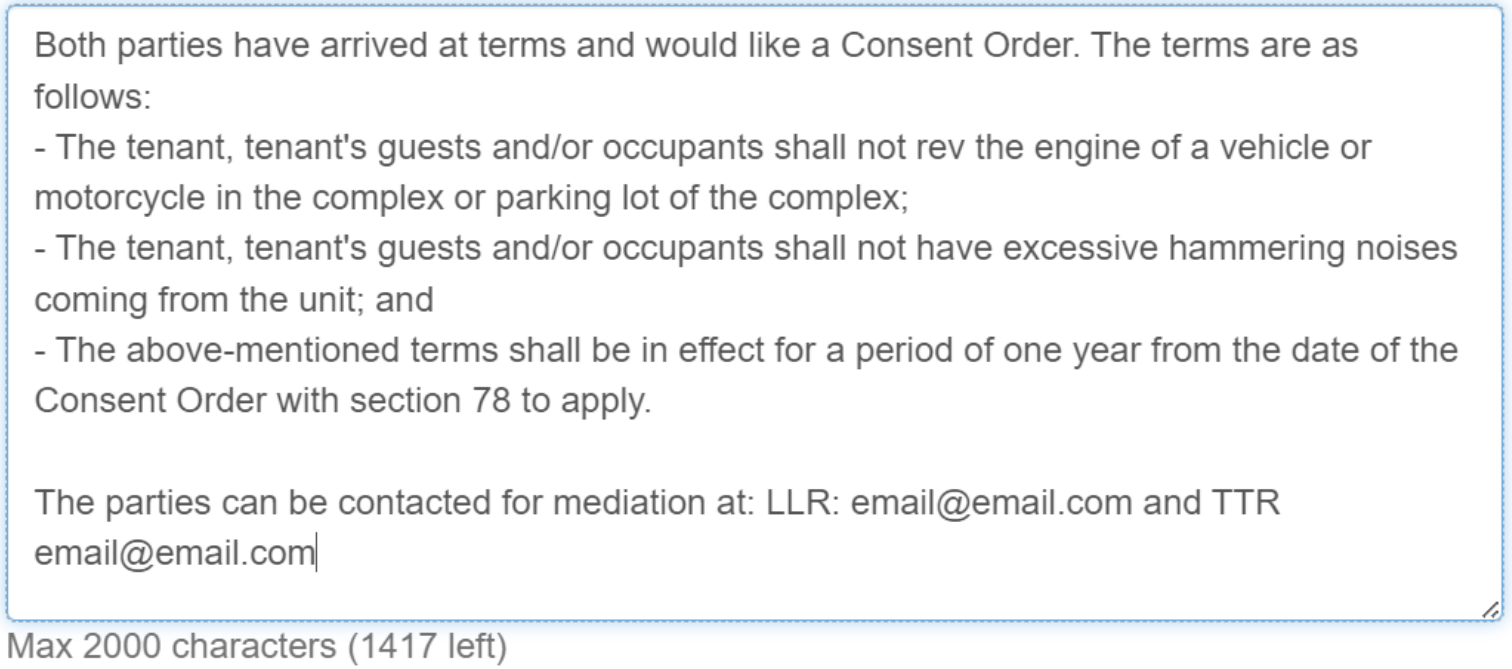
- Once a resolution has been reached, parties can indicate "Agreement Reached" in the Portal and confirm the terms of the agreement in the pop up box
- Alternatively, if parties have not yet reached an agreement but wish to give mediation a try, parties can request a DRO schedule a mediation.



BEFORE THE HEARING

Utilizing the ODR Tool in the Tribunals Ontario Portal: How To

- If parties have reached an agreement, it is important to be clear in the request:
  - What the terms are
  - What the parties want the DRO to do with the terms
  - How the parties can be reached moving forward



TIPS AND TRICKS TO UTILIZING THE ODR TOOL

1

Communicate

- The other party is more likely to be responsive if they understand the process moving forward. In resolution discussions, explain the need for a meeting to put the consent terms on record, and canvass availability beforehand where able.

2

Be Prepared

- Ensure that the client is prepared and available to provide instructions should anything additional come up while recording the consent. Ensure that all items have been addressed beforehand (filing fees, terms and applicable dates).

3

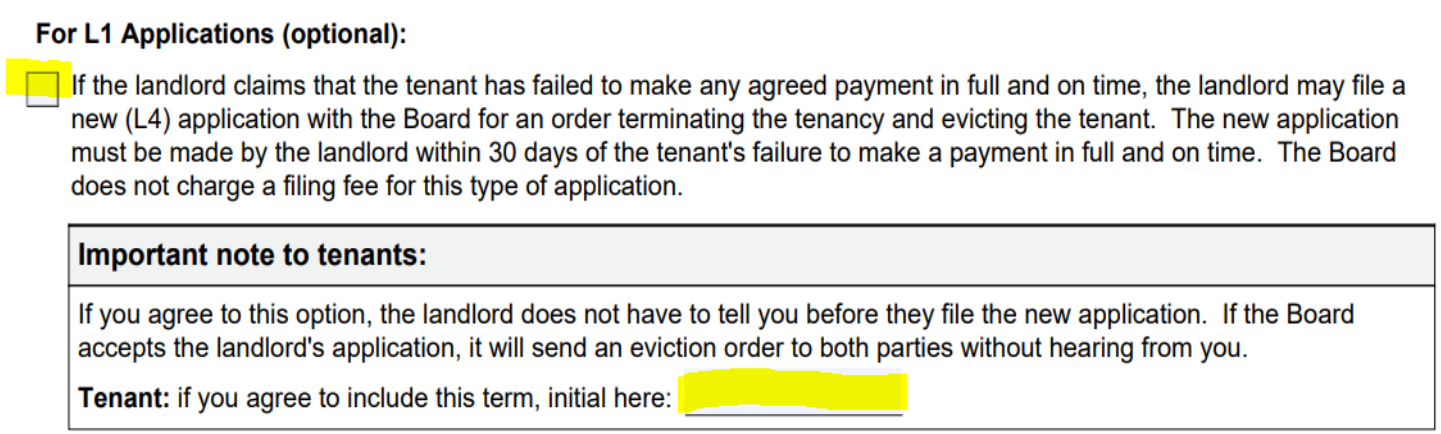
Be Consistent

- If communicating over the portal, be aware that notifications often go unnoticed. Check the portal frequently for communication from the DRO or the other side.
- It can be more effective to communicate primarily over email, turning to the portal when negotiations are complete and parties are prepared to proceed with a consent order/mediated agreement.

BEFORE THE HEARING

Payment Agreements

- With regard to the resolution of L1/L9 Applications, another option is available to parties looking to resolve matters without the need for a hearing.
- If a payment plan can be organized to address arrears (which is the most common resolution when addressing rent arrears), parties can complete and upload a Payment Agreement to the portal.
- Upon receipt, a Member will review and issue an ex-parte Order outlining the payment terms agreed to by the parties.
- TIP: it is critical that if parties have agreed that section 78 will apply to the payment plan terms, the tenant initial the box at item four, confirming understanding of section 78 and its application.



For L1 Applications (optional):

☐ If the landlord claims that the tenant has failed to make any agreed payment in full and on time, the landlord may file a new (L4) application with the Board for an order terminating the tenancy and evicting the tenant. The new application must be made by the landlord within 30 days of the tenant's failure to make a payment in full and on time. The Board does not charge a filing fee for this type of application.

Important note to tenants:
If you agree to this option, the landlord does not have to tell you before they file the new application. If the Board accepts the landlord's application, it will send an eviction order to both parties without hearing from you. **Tenant:** if you agree to include this term, initial here:

AT THE HEARING

Utilizing DRO's the Day of the Hearing

- To participate in mediation on the day of the hearing, indicate that your client is open to mediation to the moderator organizing the hearing block
- If the other side logs in as well, pay attention to their response and if they also indicate an interest in mediation
- If there is not a DRO available in the hearing block, ask the moderator if any are available or will be signing in. Rarely, moderators can request a DRO to attend.
- If there is not a DRO available at all, consider a private discussion with the other side
  - To discuss the possibility of resolution
  - To discuss any potential agreed upon facts
  - To assess the other side's position

TIPS AND TRICKS TO UTILIZING DRO'S AT THE HEARING

1

Be Prepared

- Have an understanding of your client's "non-negotiables" before the mediation session, and have an idea of what their ideal outcome is
- Ensure that the client is prepared and available to provide instructions should anything additional come up during mediation.

2

Be Realistic

- Ensure that your client understands the pros and cons of mediation, and if the "offer" from the other side is reasonable – be prepared to communicate the realities of a potential hearing to your client

3

Know When to Move On

- If it is becoming clear that parties are very far from resolution, becoming distracted or in essence "not getting anywhere", be cognizant of the fact that hearing blocks are busy, and if the matter is proceeding to hearing, it may be best to go and get in line for a contested hearing

QUESTIONS?

Presentation by Emily Van Eerd, Cohen Highley LLP

Law Society of Ontario | Barreau de l'Ontario

TAB 5

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

Effective Advocacy at the Tribunal: Practical Advice from a Former Member

Kevin Lundy
Cohen Highley LLP

September 13, 2024

cpd

Effective Advocacy at the Tribunal: Practical Advice from a Former Member Kevin Lundy, Cohen Highley LLP

1. Most importantly, have a *clear and concise* theory of your case.

   Most of the files that appear before the LTB involve fairly repetitive issues: arears of rent, maintenance problems, harassment etc. However, any file could include a new or unusual fact pattern. There are also unusual applications that do not arise on a regular basis. Many times, newer adjudicators may not be familiar with a particular aspect of the RTA and you will have to walk them through it. This is more of an issue in the virtual world as the LTB tends to schedule matters together in theme blocks (all persistent late L2s, all reviews, all co-ops). As a result, an adjudicator can now go months without encountering a particular type of application (for instance, less common applications such as a T3 application for reduced facilities or services or L2 for misrepresenting income).

   The problem is that they are also very busy and have a substantial load of orders to write and will appreciate your brevity in providing that overview.

   Law schools typically lead students to assume that if one authority is good, three must be better. What an adjudicator won't tell you is if you come into a hearing with a banker's box on a simple application (but the winner is not obvious – it could go either way depending on the evidence and advocacy), the first thing that adjudicator may do when reviewing the file do is search for some way to dismiss it. They can't warn you about excessive submissions and documents at the hearing because they will be called biased but it's human nature to want to avoid wasting time with voluminous materials that appear unnecessary.

   Simply put, **brevity is an under appreciated virtue**.

   As well, if your case is simple and straightforward and opposing counsel's is a meandering disaster, guess who comes across as more persuasive.

   This is all the more crucial given the growing trend towards "active adjudication" in which an adjudicator may not allow you to call all of the evidence you had planned to present and instead fires questions at one or both sides in an attempt to dispose of the matter without a formal hearing.

As a result, it is very important to be organized. Not only does it show respect for the process, but it also leads to more persuasive submissions. You also do not want to be perceived as the one unnecessarily generating work or have the adjudicator effectively tune out and stop trying to follow your argument, particularly if some of the points you need to make involve a nuanced interpretation of the RTA or some key factual point.

So how do you to maintain the adjudicator's focus?

a. Have the page numbers for documents and case citations ready so the adjudicator does not have to scroll back and forth through your materials – if you make them do that, you have already lost their attention.

b. if you provide the key pages and paragraphs of cases, they can write these citations down and return to your materials later while writing the order; if you just cite the case for its principle, they are more likely to gloss over how the case relates to the facts of your case. They cannot listen to you and read your documents at the same time so you do not want them to give up on one or both.

c. For more complicated files, you *can* submit a lot of documents as log as you can direct the adjudicator to the key parts immediately. They can go back later and read the document more fully as long as you have established that it is necessary to the decision making process.

Do not let them rush you in to missing something crucial to your case. To that end:

a. Protect your client's interests by ensuring that you have set out all of the necessary elements of your case so that you cannot be accused of failing to mention something in the event of a review or appeal.

b. Be ready with a clear and concise response to all likely questions.

c. Be ready to adapt quickly.

That said, if the facts and the law are against you, the shotgun approach is the last resort – however, even there, you can keep it short and sweet. If you have established a reputation of being generally quick and to the point, the adjudicator will know that you are just making the best with what you have. It may even still be more persuasive than a disorganized mess from the opposing party.

2. Non-Verbal Cues are Valuable (so don't miss them by reading your questions or submissions)

   Not a lot of judges or adjudicators have good poker faces and you can tailor the presentation of your case to their reactions – they are not aware of how readily they project their agreement, disapproval or even confusion. This is more apparent on Zoom given the medium makes ongoing interaction even more abstract and easy to forget.

   For virtual hearings, use second monitors for notes – reading is a lot easier to conceal compared to the old in-person hearing format.

   There are even some programs out there that act as a teleprompter that can stream your notes across the top of the screen.

   In the end, it is best just to use notes as notes – be prepared – you know your case and the adjudicator (should) have prepared for the hearing – so just be confident.

On a related topic…

3. Do not cite trite law or submit commonly used sections of a statute –

   It's patronizing and the adjudicator will not like it.

   A common practice when LTB hearings were conducted in person was for students from legal clinics to hand up a printout of section 20 of the RTA in 35 font as if they had just discovered the holy grail. This does not endear you to anyone and you can assume that even the greenest adjudicator will have been trained in the basics – if not, it will become obvious rather quickly.

   The test is to ask yourself if a massive number of search results in Canlii or Quicklaw tends to suggest that the legal principle you've think you just discovered may not be quite as novel as you initially assumed.

   On a similar point, some representatives also spend an inordinate portion of their pleadings telling the adjudicator how to do their job and citing the section of the RTA that provides the authority for whatever they are requesting and completely overlook why that provision applies to the present facts. If anything, the reverse would be more effective given the numerous discretionary provisions in the RTA.

If you are uncertain, it's best to err on the side of caution by prefacing the submission with "As I'm sure you are aware, Madame Chair…"

If they are truly unfamiliar with the issue or principle you are presenting, prefacing your point in this way allows the adjudicator to save face and they are also more likely to trust your submissions as accurate. They will likely consult with someone else after the hearing and confirm that you were right.

4. If there is a page limit to submissions, comply with it.

   To do otherwise is really an unforced error. Aside from the untold benefits of brevity, if you ignore page limits, not only are you cheating and unfairly prejudicing the other side, the first thing that you're telling the adjudicator is that you can't or won't follow instructions. Again, a clear and concise overview of your case is far more convincing than rambling on in an effort to see what sticks to the wall – it's obvious when that is the plan.

   Always be Preparing for the Next Step (Reviews and Appeal)

5. If the opposing party is attempting to do something improper or that unfairly prejudices your case, put any objections that you have on the record in order to paper the file for a review or an appeal.

   If you don't raise those issues at the original hearing, the omission could adversely affect your prospects upon review or worse be perceived as consent or agreement.

   Similarly, getting new evidence admitted at the appeal stage is a very difficult extra step if the court finds that it could have been raised at first instance. If the adjudicator is refusing a procedural step that may impact hearing fairness, make a verbal note of it. This will preserve your client's interests and the adjudicator may relent and (briefly) hear you out. They do not like getting reversed by Divisional Court either.

   However, it is best not to argue with the adjudicator when a decision has been made – it is not helpful and it typically will not get you anywhere other than to entrench him or her into the position that you don't want. Just politely put your objections on the record and move on.

6. On a similar point, ***never*** talk over the adjudicator – they absolutely hate that – it's disrespectful and also serves to create a messy transcript.

If you talk over others and there's a court reporter involved, that person will be ill-disposed to you as well and that is not a person you want to irritate either.

Talking at the same time harder to avoid now with virtual hearings than in person, but the key is to pay attention to non-verbal cues and use the raised hand icon if in doubt.

If you are the polite advocate and do not interrupt, you will have a significant advantage over the bull in the China shop who fails to observe proper decorum. If the other side interrupts and talks over a cranky adjudicator, you can weaponize that person's lack of decorum and perception to your advantage.

Even if you don't care for the specific adjudicator or judge or JP (and we've all been there), it is still necessary to show respect for the process. They will appreciate your professionalism.

One last tip from one who has had to scroll through hundreds of pages of submissions:

If you are asked to provide written submissions, try to use a form of pdf that can be copied and pasted – you want to be plagiarized!

If it's between you and the other party and it's close, don't discount some element of lethargy as a deciding factor – if the adjudicator likes both analyses equally but would have to type out yours and can just copy and paste the other guy's – guess who just won.

Questions?

Law Society of Ontario | Barreau de l'Ontario

TAB 6

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

Developments to Residential Tenancy Law

Robert Barber
Prevail Paralegal Services Professional Corporation

September 13, 2024

cpd

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

Developments to Residential Tenancy Law

Robert Barber, Prevail Paralegal Services Professional Corporation

Elkins v. Van Wissen, 2023 ONCA 789

- November 2023 decision from Ontario Court of Appeal.
- N12 notice for purchaser's occupation (section 49 termination notice).
- An assessment of bad faith is not limited to the moment when a landlord serves an N12 notice.
- "Unduly narrow" approach to a determination of bad faith is an error in law.
- Not enough that the selling landlord had no reason to suspect bad faith on the part of the purchasers.
- RTA Section 202(1), the Board must consider "real substance" of the transaction.
- Only considering the landlord's conduct is not enough. Purchaser's faith is relevant and necessary consideration.
- The Board also erred by not considering the purchaser's liability in a bad faith eviction.
- Failing to grapple with central issues in an LTB decision is an error of law.

Rosen v Reed, 2023 ONSC 6482

- November 2023 decision from Divisional Court.
- Dealt with the LTB's monetary jurisdiction in "pay to stay" orders.
- Tenant had arrears of $50,000.00.
- RTA Sec 203(7) limits arrears orders to $35,000.00.
- Monetary jurisdiction of the Board capped the arrears order to $35,000.00 but is not constrained to that same limit when imposing terms to void an eviction order.

Minas v. Adler, 2022 ONSC 6706

- December 2022 decision from the Divisional Court.
- Dealt with the LTB's jurisdiction to order the repossession of a rental unit after an illegal lockout.
- Landlord took the position that the tenant had vacated their rental unit by not staying at the rental unit overnight for approximately 9 months, though they continued to pay rent.
- The Landlord changed the locks and moved into the property.
- Per RTA sec 31(3), upon changing the locks without providing replacement keys to the tenant, "if the Board is satisfied that the rental unit is vacant, the Board may… order that the landlord allow the tenant to recover possession of the rental unit and that the landlord refrain from renting the unit to anyone else."
- The landlord who had illegally locked out the tenant argued that the unit was not "vacant" since they had personally moved into the rental unit, and that the LTB could not order that the tenant repossess the unit.
- The Court upheld the Board's decision as to the meaning of the term "vacant":

  "To read "vacant" in a literal or absolute sense, as was submitted by the Landlords, would permit landlords to profit from illegally evicting tenants. Indeed, one can easily imagine a situation where, in a tight rental

market, a landlord could illegally end a tenancy and then move into the unit. The tenant in this example could be rendered homeless as a result of the landlord's illegal actions and the Board would have no ability to give possession of the rental unit back to the blameless tenant. This result runs contrary to the purposes of the RTA which include protecting tenants from unlawful convictions. The Landlords' suggested interpretation of the term "vacant" in s. 31(3) of the RTA cannot, therefore, be accepted. Rather, the term "vacant" must exclude situations where a landlord moves into a rental unit after having illegally terminated an otherwise legal tenancy."

- ACTO, an intervener, had asked the Court to also interpret "vacant" so as to exclude situations where a landlord illegally terminates a tenancy and then *rents* the premises to a third party. The Court declined to deal with that situation as it was not in the fact scenario before them.

***Crete v. Ottawa Community Housing Corporation*, 2024 ONCA 459**

- June 2024 decision from Ontario Court of Appeal.
- Is snow removal a landlord or tenant responsibility?
- Section 26(1) of the *Maintenance Standards Regulation* requires a landlord to maintain "**exterior common areas"** free from unsafe accumulations of ice and snow.
- In a case where an individual tenant has exclusive use of an outdoor area, such as when renting an entire house, those exterior areas are not "common areas" for the purposes of considering whether tenant snow clearing provisions in a tenancy agreement conflict with the RTA.
- This decision is in accordance with a prior Board-level decision in 2021 (*Perreault v C/o Sentinel Management Inc.*, 2021 CanLII 148914), which had addressed the issue of whether snow and yard clearing was the responsibility of the landlord or the tenant in an area of exclusive possession by a tenant. From paragraph 17:

  "…my core finding is that the lawn maintenance and snow removal on exclusive- use areas fall under the Tenant's obligations under section 33 of the Act, not the Landlord's obligations under section 20. The delegation of these responsibilities to the Tenant in the lease is not improper."

Landlord and Tenant Board Refresher for Lawyers and Paralegals 2024

Developments to Residential Tenancy Law

Robert Barber, Prevail Paralegal Services Professional Corporation

Case Law Links

***Elkins v. Van Wissen*, 2023 ONCA 789**

***Rosen v Reed*, 2023 ONSC 6482**

***Minas v. Adler*, 2022 ONSC 6706**

***Crete v. Ottawa Community Housing Corporation*, 2024 ONCA 459**

***Perreault v C/o Sentinel Management Inc.*, 2021 CanLII 148914**

Elkins v. Van Wissen

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

E.E. Gillese, M.L. Benotto and J.M. Copeland JJ.A.

Heard: September 6, 2023.

Judgment: November 28, 2023.

Docket: COA-23-CV-0098

[2023] O.J. No. 5338 | 2023 ONCA 789 | 168 O.R. (3d) 756 | 2023 A.C.W.S. 5920 | 490 D.L.R. (4th) 328 | 56 R.P.R. (6th) 30 | 2023 CarswellOnt 18265

Between Marilyn Elkins and Joseph Fraser, Tenants/Appellants (Appellants), and Grace Van Wissen, John Van Wissen, Margaret Van Wissen, Embleton, Homes Inc., Paramjit Singh Chahal, Surinderpal Singh Kohli, Malwinder, Saini, Embleton Homes[1]and Sukhwinder Singh, Landlords/Respondents (Respondents)

(80 paras.)

Counsel

Ryan Hardy, for the appellant Marilyn Elkins.

No one appearing for the appellant Joseph Fraser.

Alexander Dos Reis, for the respondent John Van Wissen (via videoconference).

No one appearing for the respondent Grace Van Wissen.

No one appearing for the respondent Margaret Van Wissen.

Derrick M. Fulton, for the respondents Embleton Homes Inc., Paramjit Singh Chahal, Surinderpal Singh Kohli, Malwinder Saini, Embleton Homes and Sukhwinder Singh (via videoconference).

Eli Fellman, for the Landlord and Tenant Board.

The judgment of the Court was delivered by

E.E. GILLESE J.A.

I. INTRODUCTION

1 In Ontario, the law permits landlords to evict tenants to allow the landlord, or certain members of the landlord's family, to move in. The law extends such "own use" eviction power to purchasers, but the eviction must be made in good faith.

2 Section 49(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (the "*RTA*"), empowers a landlord who

has entered into an agreement of purchase and sale to, in certain circumstances, give a tenant a notice terminating the tenancy on behalf of the purchaser, if the purchaser "in good faith" requires personal possession of the residential rental unit. And, pursuant to s. 57(1)(b), the Landlord and Tenant Board (the "Board") may make certain orders if it determines, among other things, that the landlord gave a s. 49 termination notice "in bad faith".

3 This appeal addresses the following questions. Where a landlord terminates a tenancy pursuant to s. 49(1) of the *RTA*: (1) how is the Board to determine whether the landlord acted in bad faith within the meaning of s. 57(1)(b); and (2) must the Board assess the purchaser's good faith requirement in s. 49(1) when making that determination?

II. BACKGROUND

4 Beginning in 2012, Marilyn Elkins and her adult son Joseph Fraser (the "Tenants") rented and occupied a single-family residence in Brampton, Ontario (the "Residence"). The Tenants say that they enjoyed a comfortable and affordable home in the Residence.

5 The Residence was on a property comprised of a commercial retail garden centre/nursery and two detached residential houses (the "Property"). The landlords were Grace Van Wissen, John Van Wissen, and Margaret Van Wissen (the "Vendor Landlords").[2]

6 On March 5, 2018, Paramjit Singh Chahal and Surinderpal Singh Kohli (the "Original Purchasers") signed and dated an Agreement of Purchase and Sale (the "APS") for the Property. Mr. Chahal also completed a Form 160 that same day. A Form 160 is entitled "Registrant's Disclosure of Interest Acquisition of Property".[3]

7 On the Form 160, Mr. Chahal declared he was a registered real estate salesperson representing Homelife/Miracle Realty Ltd. in connection with a proposed offer to purchase the Property. Immediately below that, in preprinted words, the Form 160 provided: "Please be advised that, if the proposed Offer is accepted, I will be either directly or indirectly acquiring an interest in your Property". Below that statement, a preprinted note called for an explanation if the registrant's interest was indirect. Mr. Chahal handwrote the following explanation: "Being a partner, we are buying this property as a future development".

8 There were two signature lines on the Form 160: one for the registrant who was making the declaration and the other for the Broker of Record/Manager of Brokerage. Mr. Chahal signed as the registrant. It is unclear who signed for the Broker of Record/Manager of Brokerage.

9 On March 6, 2018, the Vendor Landlords signed the Acknowledgement section of the Form 160. The preprinted words of acknowledgement read as follows: "I/We, the undersigned, as Seller(s) in this transaction have read and clearly understand this statement and acknowledge this date having received a copy of same, PRIOR TO BEING PRESENTED WITH AN OFFER TO PURCHASE, LEASE, EXHANGE, OR OPTION" (emphasis in the Form 160). The Vendor Landlords also signed and dated the APS on March 6, 2018.

10 The APS had a scheduled closing date of June 1, 2018. A term of Schedule A to the APS required the Vendor Landlords to give vacant possession of the Property. Schedule A to the APS also included a substitute purchasers' clause.

11 On March 7, 2018, pursuant to s. 49(1) of the *RTA*, the Vendor Landlords served the Tenants with a Form N12. Form N12 is entitled "Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit". I will refer to the Form N12 as the "s. 49 Termination Notice".

12 The s. 49 Termination Notice gave the Tenants a move-out day of May 31, 2018. On that notice, Reason 2 is ticked off to show "The purchaser" intends to move into the rental unit.

13 On May 22, 2018, it appears that the lawyer for the Original Purchasers notified the lawyer for the Vendor Landlords that title to the Property would be taken by a corporation, Embleton Homes Inc. (the "Purchaser").[4] The

directors of the Purchaser are the Original Purchasers plus two others, Malwinder Saini and Sukhwinder Singh. I will refer to the Original Purchasers and the Purchaser together as the "Purchasers".

14 On June 8, 2018, the Tenants moved out of the Residence. They testified that they moved out as a result of having received the s. 49 Termination Notice.

15 Over the following months, the Residence remained vacant. Toward the end of 2018, the son of Mr. Kohli, one of the Original Purchasers, moved into the Residence but stayed for only approximately 25 days. The Residence was subsequently rented out for a higher amount than what the Tenants had been paying.

16 On March 8, 2019, the Tenants filed three applications with the Board: T1, T2, and T5 applications. In their T5 application, the Tenants alleged that the s. 49 Termination Notice was given in bad faith and the Original Purchasers did not want the Residence for their own use (the "T5 Application" or the "s. 57(1)(b) application"). Because only the T5 Application is relevant to this appeal, I will say nothing more about the other two applications.

17 The Board dismissed the Tenants' T5 Application.

18 The Tenants appealed the Board decision to the Divisional Court pursuant to s. 210(1) of the *RTA*.[5] The Divisional Court dismissed their appeal.

19 The Tenants then sought leave to appeal to this court. Pursuant to s. 6(1)(a) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "*CJA*"), this court granted leave on two issues: "the test for bad faith under s. 57 of the *Residential Tenancies Act*; and the failure of the Divisional Court to address the potential liability of the respondent purchasers of the property".

20 The Tenants were self-represented at the Board and before the Divisional Court. However, on this appeal, the tenant Marilyn Elkins was represented by the Advocacy Centre for Tenants Ontario.

21 Counsel for the Board participated in this appeal to provide the court with the relevant statutory context, make submissions on the standard of review, and address the impact of the issues on the Board's jurisdiction and case law. The Board did not take a position on the merits of the appeal.

22 The respondent, John Van Wissen, was represented by counsel on this appeal but took no position, filed no materials, and made no submissions. The respondents Grace Van Wissen and Margaret Van Wissen were not represented by counsel, filed no materials, and made no submissions. Separate counsel represented the other respondents jointly on the appeal, namely, the Original Purchasers, the Purchaser, and the other two directors of the Purchaser. While the other respondents filed no materials, their counsel made brief oral submissions, primarily on the question of the potential liability of purchasers.

III. THE RELEVANT STATUTORY PROVISIONS

23 As noted, the Vendor Landlords gave the Tenants a notice terminating their tenancy pursuant to s. 49(1) of the *RTA*.

24 Section 49(1) stipulates that a landlord may, "on behalf of the purchaser", give notice terminating the tenancy, "if the purchaser in good faith requires possession" of the rental unit for residential occupation. It reads as follows:

> **49(1)** A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,
>
> (a) the purchaser;
>
> (b) the purchaser's spouse;

(c) a child or parent of the purchaser or the purchaser's spouse; or

(d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located. [Emphasis added.]

25 The Tenants' T5 Application was made pursuant to s. 57(1)(b) of the *RTA*, the relevant parts of which read as follows:

57(1) The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,

...

(b) the landlord gave a notice of termination under section 49 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and no person referred to in clause 49 (1) (a), (b), (c) or (d) or 49 (2) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;

... [Emphasis added.]

26 Under s. 57(3), the Board may make orders that include requiring the landlord to pay the tenant certain sums, abate rent, and pay administrative fines to the Board. Section 57(3) also empowers the Board to make any other order it "considers appropriate". It reads:

(3) The orders referred to in subsection (1) are the following:

1. An order that the landlord pay a specified sum to the former tenant for all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit.

1.1 An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.

1.2 An order that the landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.

2. An order for an abatement of rent.

3. An order that the landlord pay to the Board an administrative fine not exceeding the greater of $10,000 and the monetary jurisdiction of the Small Claims Court.

4. Any other order that the Board considers appropriate.

27 Section 202(1) of the *RTA* directs the Board, when making findings on an application, to ascertain the real substance of all transactions and activities relating to a rental unit and the good faith of the participants. Section 202(1) reads as follows:

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

IV. THE DECISIONS BELOW

A. The Board Decision

28 The Board gave extremely brief reasons for dismissing the Tenants' T5 Application.

29 In the Background section of its reasons, at para. 9, the Board recited that, on March 7, 2018, the Landlord served the Tenants with the s. 49 Termination Notice. In paras. 10-12, it added the following:

> 10. The evidence for the Landlord is that, at the time the (N12) was served, it was given to the Tenant(s) by the Landlord because the Agreement of Purchase and Sale stipulated that vacant possession was required and a notice was to be given because the Purchaser required residential occupation of the rental premises for a family member of the Purchaser to live in the unit.
>
> 11. The fact that the Purchaser's son did not immediately take possession and continue to live in the rental unit, does not, to my mind, mean that the (N12), at the time it was served, was given by the former Landlords in bad faith.
>
> 12. The Landlord's further affirmed that at the time the Landlord(s) served the (N12) notice there was no reason not to believe it was the Purchasers' intention for a family member to move into the unit.

30 At para. 13, the Board set out s. 57(1)(b) of the *RTA*. At para. 14, the Board observed that, to be successful, the tenants had to establish, on a balance of probabilities, that: (1) the landlord gave the N12 notice under s. 49 of the *RTA* in bad faith; (2) the tenants vacated the rental unit as a result of the N12 notice or a Board order based on the N12 notice; and (3) the purchaser did not move into the rental unit within a reasonable time after the Tenants vacated.

31 The Board's analysis on the applicability of s. 57(1)(b) is contained in paras. 15-17 of its decision. Those paragraphs read as follows:

> 15. The first part of the test requires me to look at the intention of the Landlords at the time the (N12) notice was given. At the time of the (N12), did the Landlords serve the (N12) in good faith, i.e. to provide vacant possession for the purchasers' residential occupation?
>
> 16. Based upon the totality of the evidence provided, I am satisfied that the Landlord's served the (N12) in good faith.
>
> 17. I find that the Landlord did not give the Tenant(s) a notice in bad faith, and therefore the Tenants' did not, on a balance of probabilities, prove all three parts of the test, as such the T5 portion of the application is to be dismissed and no remedies will be granted. [Emphasis in original.]

B. The Divisional Court Decision

32 As previously noted, the Divisional Court dismissed the Tenants' appeal, and this court granted the Tenants leave to appeal on two issues: (1) the test for bad faith under s. 57(1) of the *RTA*; and (2) the failure of the Divisional Court to address the potential liability of the purchasers of the Property. Because the Divisional Court said nothing on the second issue, the summary below is of only the Divisional Court's reasons on the first issue.

33 As the Divisional Court noted, appeals of a Board order under s. 210(1) of the *RTA* are limited to questions of law and such questions are reviewed on a correctness standard.[6]

34 The Divisional Court dismissed the appeal after concluding that the Board made no error on a question of law in determining the Vendor Landlords did not act in bad faith in issuing the s. 49 Termination Notice. It gave the following reasons for so concluding.

> * The Board articulated and applied the three-part test set out in s. 57(1)(b) of the *RTA*, the first part of which requires the tenant to establish that the landlord gave the s. 49 termination notice in bad faith.

* The Board held that the first part of the test required a consideration of the Vendor Landlords' intention at the time the s. 49 Termination Notice was given, and the change of purchasers and title direction took place after that notice was given.

* It rejected the Tenants' argument that the Board's failure to infer bad faith was an error of law, saying that an appellate court is prohibited from reviewing a tribunal's findings and inferences of fact, "if there was some evidence upon which the decision-maker could have relied to reach that conclusion" (citation omitted).

* It also rejected the Tenants' argument that the Board erred in law by restricting its consideration of bad faith to the Vendor Landlords' intention at the time the s. 49 Termination Notice was given. In support of this argument, the Tenants had referred the Divisional Court to *TST-94914-18 (Re)*, 2019 CanLII 134579 (Ont. L.T.B.). In *TST-94914-18 (Re)*, the Board held that a landlord's duty of good faith extends beyond the time the termination notice is served and found bad faith on the part of the landlords. The Divisional Court distinguished *TST-94914-18 (Re)* from this case and said the former should be restricted to its facts. It noted that in *TST-94914-18 (Re)*, the Board found the landlords acted in bad faith when, knowing that there was no prospect of the sale closing, the landlords asked the sheriff to enforce the Board's eviction order. However, in this case, the sale of the Property "was alive" when the Tenants moved out and the Vendor Landlords "could not have been expected to refuse to close or to get into a dispute with the Purchasers with the potential of litigation".

V. THE ISSUES

35 These reasons address the two issues for which leave was granted:

1. What is the test for bad faith under s. 57(1)(b) of the *RTA*?
2. Did the Divisional Court err by failing to address the potential liability of the Purchasers of the Property?

Issue 1 The Test for Bad Faith under s. 57(1)(b) of the *RTA*

A. The Standard of Review

36 The Tenants appealed the Board decision to the Divisional Court pursuant to s. 210(1) of the *RTA*. As noted, s. 210(1) limits such an appeal to questions of law.

37 When a court hears an appeal from an administrative decision, in considering questions of law, the standard of review is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37. Therefore, the Divisional Court had to apply a correctness standard when reviewing the Board decision.

38 In this case, the Divisional Court properly identified correctness as the standard it was to apply in reviewing the Board decision. However, in determining that the Board committed no errors of law, the Divisional Court incorrectly applied that standard.

B. The Board Errors

39 In my view, the Board made the following three errors on questions of law: (1) it erred in its approach to determining whether, pursuant to s. 57(1)(b) of the *RTA*, the Vendor Landlords acted in bad faith in giving the s. 49 Termination Notice; (2) it erred by failing to consider the Purchasers' good faith, as required by s. 49(1); and (3) it failed to grapple with the evidence and the issues necessary for resolution of the T5 Application.

(1) Incorrect approach for determining bad faith under s. 57(1)(b)

40 The Tenants' T5 Application was brought pursuant to s. 57(1)(b) of the *RTA*. Section 57(1)(b) required the

Board to determine whether the Vendor Landlords gave the s. 49 Termination Notice "in bad faith". The Board decided that matter based on a single consideration: at the time the Vendor Landlords served the s. 49 Termination Notice, the Vendor Landlords said they had "no reason not to believe it was the [Original] Purchasers' intention for a family member to move into the unit". This is an unduly narrow approach for determining bad faith under s. 57(1)(b) and, in my view, amounts to an error of law. My view rests on a contextual interpretation of ss. 49(1) and 57(1)(b). It is buttressed by a consideration of Board jurisprudence on this matter.

(a) A contextual interpretation of ss. 49(1) and 57(1)(b)

41 The modern approach to statutory interpretation requires that the words of ss. 49(1) and 57(1)(b) "be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, at para. 21, quoting Elmer Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 87.

42 The *RTA* and its predecessor are remedial legislation with a tenant protection focus: *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44, 431 D.L.R. (4th), at para. 19; *Price v. Turnbull's Grove Inc.*, 2007 ONCA 408, 85 O.R. (3d) 641, at para. 26. The purposes of the *RTA* are set out in s. 1. The first purpose listed is "to provide protection for residential tenants from...unlawful evictions". To ignore events after a landlord gives a tenant a s. 49 termination notice limits the Board from fulfilling its responsibility to determine bad faith under s. 57(1)(b) and undermines the *RTA*'s stated purpose of providing tenants with protection from unlawful evictions.

43 On a plain reading of ss. 49(1) and 57(1)(b), the landlord's conduct is linked to the purchaser's good faith. Section 49(1) permits the landlord to, on behalf of the purchaser, give the tenant a termination notice so long as the purchaser, in good faith, requires possession of the rental unit for the purpose of residential occupation. Section 57(1)(b) requires the Board to determine, among other things, whether the landlord gave the s. 49 termination notice in bad faith. When ss. 49(1) and 57(1)(b) are read together, it is clear that the object of those provisions is to prevent the sale of a property from being used to unlawfully evict a tenant. Accordingly, the Board must consider all the evidence before it that is relevant to the landlord's bad faith under s. 57(1)(b). It is an error of law for the Board to restrict its consideration to the evidence at the point in time when the landlord gives the tenant a s. 49 termination notice. This case makes that point.

44 As a result of artificially narrowing the assessment of bad faith to when the s. 49 Termination Notice was given, the Board failed to consider that, after the notice was given but before the sale of the Property closed, the Vendor Landlords and/or their lawyer knew that title to the Property would be taken in the name of Embleton Homes Inc., a corporation. A corporation cannot personally occupy a residence for residential purposes. This information must surely be relevant to the Board's determination of the Vendor Landlords' bad faith under s. 57(1)(b).

45 It could be argued that s. 57(1)(b) implicitly limits Board scrutiny to the landlord's knowledge when it gives the s. 49 termination notice. However, such an interpretation runs afoul of s. 202(1) of the *RTA*. Under s. 202(1), the Board is required, when making findings on an application, to ascertain the "real substance of all transactions and activities relating to...a rental unit and the good faith of the participants". Limiting the assessment of a landlord's bad faith to that single point in time when the s. 49 termination notice is given precludes the Board from both ascertaining the true substance of the transaction between the landlord and the purchaser and conducting a fair assessment of their good faith.

46 As Board member Lynn Mitchell stated in *CET-67272-17 (Re)*, 2017 CanLII 70040 (Ont. L.T.B.), at para. 20:

> 20. [L]imiting the question of good faith to an exploration of the mind of the Landlord at the instant of serving the N12 notice, and to ignore all the surrounding circumstances, would lead to results inconsistent with the objects of the Act. To require the Tenant to establish what was in the mind of the Landlord at the instant of the N12 notice service, without regard to the surrounding circumstances and to the behaviour of the Landlord between the service of the N12 notice and the termination date, would upset the balance of interests which the Act aims to achieve. The good faith obligation attaching to an N12 notice must surely survive the instant of its service.

(b) Board jurisprudence

47 Other Board decisions similarly demonstrate a broader approach to the bad faith inquiry under s. 57(1)(b), one that considers the parties' conduct prior to, at the time of, and subsequent to the giving of the s. 49 termination notice. As I have explained, this broader approach results in a fairer, more meaningful assessment of bad faith in s. 57(1)(b) and accords with the purpose of the *RTA* to prevent unlawful evictions.

48 One such case is *TST-94914-18 (Re)*. There the Board found bad faith on the part of the landlords on facts arising after the s. 49 termination notice had been given. The tenants contested their eviction, and the Divisional Court issued a stay of eviction. The purchaser then advised that she could not complete the sale. Despite this, the landlords had the sheriff enforce the eviction when the stay was lifted. The landlords ultimately sold the property to a different buyer. The Board found that, while the landlords had not acted in bad faith when they served the s. 49 termination notice, they did act in bad faith in enforcing the eviction order with knowledge that the sale to the original purchaser had no prospect of closing.

49 Below, the Divisional Court considered *TST-94914-18 (Re)* but declined to apply its reasoning on the basis that it could be distinguished from this case. I agree that the two cases differ factually. However, those factual differences do not account for the different legal approaches taken in determining bad faith under s. 57(1)(b). For the reasons given above, in my view, the approach taken by the Board in *TST-94914-18 (Re)* in determining bad faith is correct in law whereas the approach taken in this case is not.

50 At para. 22 of *Duarte v. 2132338 Ontario Ltd.*, 2021 CanLII 146522 (Ont. L.T.B.), a Board decision issued after the decision was rendered in this case, the Board stated:

> 22. [I]n relaying the Purchaser's intentions to terminate the tenancy, the Landlord does not serve as a mere messenger with no duties or obligations to the Tenants. By conveying the Purchaser's stated intention to occupy the rental unit, the Landlord initiated events that had the serious consequence of ending the tenancy and compelling them to relocate their family...As a result, I find that the Landlord had a duty to the Tenants to exercise some due diligence to confirm the good faith intentions of the Purchaser before putting the eviction in motion. Otherwise, an unscrupulous purchaser would be free to use a landlord as a straw man to divest tenants of their housing and thereby evade the statutory protections afforded to them under the Act.

51 I agree.

(2) Failure to consider the Purchasers' good faith

52 Section 49(1) stipulates that a landlord may give a tenant a termination notice, on behalf of a purchaser, if the purchaser, "in good faith", requires possession of the unit for residential occupation. When deciding the Tenants' T5 Application, the Board did not consider whether the Purchasers "in good faith" required the Residence for residential occupation. In my view, that failure constitutes an error in law. When deciding applications brought under s. 57(1)(b), it is insufficient for the Board to assess only whether the landlord acted in bad faith in giving a s. 49 termination notice. The Board must also assess the purchaser's good faith, which s. 49(1) requires. After making both those determinations, the Board must then consider what orders to make in respect of each of the landlord and the purchaser.

53 My view is informed by a consideration of: (1) the relevant provisions in the *RTA*; (2) Board *Interpretation Guideline 12: Eviction for Personal Use, Demolition, Repairs and Conversion*; and (3) Board jurisprudence.

(a) The relevant *RTA* provisions

54 The modern approach to statutory construction is set out above and need not be repeated. I use that approach in the following analysis.

55 Section 49(1) empowers the landlord to give the tenant a termination notice "on behalf of the purchaser...if the

purchaser in good faith requires possession" of the rental unit "for the purposes of residential occupation". Accordingly, an unlawful eviction under s. 49(1) can occur in one of three ways: (1) the landlord gives the s. 49 termination notice in bad faith but the purchaser genuinely requires personal possession of the rental unit; (2) the landlord gives the s. 49 termination notice in good faith but the purchaser does not genuinely require personal possession; or (3) the landlord and purchaser each independently act in bad faith or collude, in bad faith, to evict the tenant by means of a s. 49 termination notice. If the Board considers only the landlord's bad faith, and it was the purchaser who was not acting in good faith, the purchaser is shielded from any consequence under the *RTA* and the tenant loses an opportunity for redress as against the purchaser. Such a result undermines the *RTA*'s stated purpose, in s. 1, to protect tenants from unlawful evictions.

56 Furthermore, the conduct of the landlord and the purchaser are expressly linked in ss. 49(1) and 57(1)(b). Section 49(1) permits the landlord to, "on behalf of the purchaser", give the tenant a termination notice so long as the purchaser, in good faith, requires possession of the rental unit for residential occupation and s. 57(1)(b) requires the Board to determine whether the landlord gave the s. 49 termination notice in bad faith. How can the Board assess, under s. 57(1)(b), whether the landlord gave the s. 49 termination notice in bad faith without also assessing the purchaser's good faith intentions under the latter provision? If it were otherwise, all that would be required to evict a tenant pursuant to s. 49(1) is for the purchaser to tell the landlord it, or one of the other individuals listed in s. 49, intended to use the rental unit for residential occupation.

57 Section 202(1) of the *RTA* reinforces my interpretation of the legislation. It requires the Board, when making findings on an application, to ascertain the "real substance of all transactions" relating to a rental unit and "the good faith of the participants". The transaction in s. 49(1) is an agreement of purchase and sale. There are two participants to such a sale transaction: the vendor landlord and the purchaser. A consideration of both participants is necessary to ascertain the "real substance" of the transaction between them and the "good faith" of each in evicting the tenant.

58 This interpretation finds further support in s. 57(3) of the *RTA*. While s. 57(3) sets out specific orders that can be made against a landlord who acts in bad faith in giving a s. 49 termination notice, it also empowers the Board to make any order it "considers appropriate". Thus, if the Board finds that a landlord did not act in bad faith but the purchaser did, s. 57(3) gives the Board the power to make appropriate orders against the purchaser. This "gives teeth" to the good faith requirement on the part of purchasers in s. 49(1).

(b) Board *Interpretation Guideline 12*

59 Board *Interpretation Guideline 12* is also consistent with requiring the Board, on a T5 application, to consider the good faith of both the landlord and the purchaser.

60 *Interpretation Guideline 12* is entitled: *Eviction for Personal Use, Demolition, Repairs and Conversion*. It offers tenants the following guidance, under the heading "Who should be named as the respondent":

> If the tenancy was terminated as a result of a notice of termination for personal use by a purchaser and the former tenant is alleging that the purchaser has failed to move into the rental unit within a reasonable time after the tenant vacated the rental unit, the purchaser should be named as a respondent in addition to the landlord who served the notice of termination. See: TST-42753-13-RV (Re), 2014 CanLII 28557 (ON LTB), upheld by the Divisional Court, *Wojcik v Pinpoint Properties Ltd.*, 2016 ONSC 3116.

61 Advising tenants to name both the landlord and the purchaser as respondents is consistent with the Board having to assess the good faith of both when determining whether a tenant has been unlawfully evicted pursuant to s. 49(1).

62 In this case, the Tenants followed the guidance in *Interpretation Guideline 12* in drafting their T5 Application. They named the Vendor Landlords, the Original Purchasers, and the Purchaser, Embleton Homes Inc. (as well as the other directors of Embleton Homes Inc.). In their pleadings, the Tenants discuss the intentions of the Original Purchasers at length.

(c) Board jurisprudence

63 As counsel for the Board advised in his submissions to this court, the Board jurisprudence on this matter is not consistent. There are cases which, like the current one, ignore the potential liability of purchasers. However, there are other Board decisions in which the Board considered both whether the purchaser acted in good faith under s. 49(1), and whether the landlord acted in bad faith under s. 57(1)(b).

64 For example, in *TST-10645-19 (Re)*, 2020 CanLII 31285 (Ont. L.T.B.), the landlord gave the tenant a s. 49 termination notice at the request of the purchaser, but the Board traced the bad faith back solely to the purchaser. It ordered only the purchaser to compensate the tenant for his losses.

65 Additionally, in *TST-42753-13-RV (Re)*, 2014 CanLII 28557 (Ont. L.T.B.), aff'd 2016 ONSC 3116, the Board found that the purchasers, through their agent, caused the landlord to give the tenant a s. 49 termination notice. However, because the Board found that only the purchaser had acted in bad faith, it made orders only in respect of the purchaser.

66 These decisions reinforce my view that the Board must consider the good faith of the purchaser as well as the bad faith of the landlord when deciding applications under s. 57(1)(b).

(3) Failure to grapple with the issues and the evidence

67 An administrative decision maker's reasons must "meaningfully account for the central issues and concerns raised by the parties" and be responsive to the parties' submissions: *Vavilov,* at para. 127. The Board reasons do neither. Consequently, they prevent meaningful appellate review and constitute an error of law: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at para. 28; *Hanna & Hamilton Construction Co. Ltd. v*. *Robertson,* 2021 ONCA 660, at para. 6.

68 In this case, among other things, the T5 Application presented the Board with two issues for resolution: (1) did the Vendor Landlords give the s. 49 Termination Notice in bad faith? and (2) did the Purchasers, in good faith, require possession of the Residence for residential occupation? The Board reasons make no mention of the second issue nor the evidence relating to it. Clearly, appellate review was prevented on that issue and, for that reason alone, the Board erred in law.

69 In addition, however, the Board reasons on the first issue are so deficient as to constitute legal error. The Board made no attempt to grapple with the body of evidence adduced, or the Tenants' submissions on whether the Vendor Landlords gave the s. 49 Termination Notice in bad faith. Instead, the Board simply recited the Vendor Landlords' assertion that when they gave the Tenants the s. 49 Termination Notice, there was no reason to believe it was not the purchasers' intention to have a family member reside in the Residence.

70 Even on the improperly narrow view of the test for bad faith used by the Board, it failed to address the evidence adduced on this issue. That evidence includes: (1) the Vendor Landlords' receipt of the Form 160, in which one of the Original Purchasers stated that he was a real estate salesperson as well as one of the Original Purchasers, and stated, "Being a partner, we are buying this property as a future development"; and, (2) the Original Purchasers' bald assertion that they intended the Residence for personal use.

71 Had the Board approached the first issue correctly, it would have considered the relevant circumstances both before and after serving the s. 49 Termination Notice. In addition to the two evidentiary considerations noted above, the Board would have had to consider that: prior to closing, the Vendor Landlords and/or their lawyer knew title to the Property was to be taken in the name of a corporation and a corporation cannot personally occupy residential premises; the Residence remained vacant for five months after closing; it was then occupied for only about 25 days by one of the Original Purchasers' sons; and, thereafter, the Residence was rented out for a higher price than that which the Tenants had paid.

72 The failure of the Board to address the evidence on the central issue of the Vendor Landlords' bad faith prevents appellate review and constitutes an error of law.

C. Result

73 Because the Board failed to make the factual findings necessary to fairly resolve the Tenants' T5 Application, this court is not in a position to decide it. Accordingly, I would remit it to the Board for a redetermination in accordance with these reasons.

Issue #2 The Divisional Court erred by failing to address the Purchasers' potential liability

A. The Standard of Review

74 To determine what standard of review this court is to apply when deciding Issue 2, we must consider the statutory provision which led to that issue coming before this court: *Vavilov*, at para. 33. In this case, s. 6(1)(a) of the *CJA* is the relevant provision, as the Tenants obtained leave to appeal the Divisional Court order pursuant to it.

75 Section 6(1)(a) provides that an appeal lies to this court from an order of the Divisional Court, with leave, "on a question that is not a question of fact alone". Thus, when an appeal comes before this court pursuant to s. 6(1)(a) of the *CJA*, the appeal can be on a question of law and/or on a question of mixed law and fact. The only limitation is that the question cannot be one of fact alone. Because the legislation does not indicate what standard of review this court is to apply on appeals heard pursuant to s. 6(1)(a), it is necessary to characterize the nature of Issue 2 to determine what standard of review applies. Thus, the question becomes, does Issue 2 raise a question of law or a question of mixed law and fact? If the former, the correctness standard of review applies. If the latter, absent an extricable error in principle, deference is owed to the Divisional Court decision.

76 As I explain below, Issue 2 raises a question of law. Therefore, this court must review the Divisional Court decision on the Purchasers' potential liability on a correctness standard.

B. Analysis

77 The Tenants' appeal to the Divisional Court required that court to determine whether the Board committed errors on questions of law. The Divisional Court dismissed the appeal on the basis that the Board made no such errors. However, as I have explained, the Board did err on questions of law by, among other things, failing to address the Purchasers' potential liability. It was an error of law for the Divisional Court to fail to identify and address that Board error of law.

78 I would add that, in the circumstances of this case, the Divisional Court's error is perhaps understandable. There is nothing in the Board reasons to alert the Divisional Court to the issue of the Purchasers' potential liability. Furthermore, the parties did not squarely address this issue before the Divisional Court. Nonetheless, on a fair reading of the Tenants' documents and submissions before the Board, it is apparent that the Purchasers' potential liability was a live issue which the Board was required to address.

VI. DISPOSITION

79 Accordingly, I would grant the appeal and remit the matter to the Board for redetermination, in accordance with these reasons.

80 Neither the Tenants nor the Board seek costs of the appeal and I would award none. In light of the result, however, I would set aside the costs orders made against the Tenants by the Divisional Court.

E.E. GILLESE J.A.

M.L. BENOTTO J.A.:— I agree.
J.M. COPELAND J.A.:— I agree.

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1 It is unclear who Embleton Homes, as opposed to Embleton Homes Inc., is. However, both names appear in the style of cause of the Divisional Court order in this matter. In accordance with standard practice in this court, we have followed suit.

2 A fourth person - Hendricka Van Wissen - was originally named on the Tenants' Board applications but her name was removed because she died before the hearing.

3 Form 160 is a Ontario Real Estate Association form for use by a registrant to disclose an interest in the acquisition of a property.

4 In their materials before the Divisional Court, the parties state that notification of the change of purchaser to Embleton Homes Inc. was sent from the lawyer for the Original Purchasers to the lawyer for the Vendor Landlords. However, at para. 7 of its reasons, the Divisional Court said that the Vendor Landlords were notified by the Original Purchasers' lawyer that title would be taken by a corporation, Embleton Homes Inc..

5 Section 210(1): Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law.

6 Section 210(1) of the *RTA* is set out at footnote 5 above.

End of Document

Rosen v. Reed

Ontario Judgments

Ontario Superior Court of Justice

Divisional Court - Toronto, Ontario

D.L. Corbett, J. Leiper and K. Muszynski JJ.

Heard: May 18, 2023 by ZOOM.

Judgment: November 17, 2023.

Divisional Court File No. 176/23

[2023] O.J. No. 5223 | 2023 ONSC 6482

Between David Rosen, Appellant, and Wendy Reed, Respondent

(26 paras.)

Counsel

Yonatan M. Kramer, for the Appellant.

Timothy M. Duggan, for the Respondent.

Eli Fellman, for the Landlord Tenant Board.

REASONS FOR DECISION

The judgment of the Court was delivered by

D.L. CORBETT J.

1 This appeal concerns "pay to stay" orders made by the Landlord and Tenant Board ("LTB" or the "Board"). Are they subject to the monetary jurisdiction of the Board (currently $35,000) or may the Board order that all outstanding rent be paid to void an order terminating a tenancy if the arrears are more than $35,000?

2 The short answer to this question is that the monetary jurisdiction of the Board does not constrain its discretion to impose terms to void an order terminating a tenancy. This has long been the law stated by this court and has been reaffirmed by this court as recently as 2023 (*Galaxy Real Estate Core Ontario LP* v. *Kirpichova*, 2023 ONSC 4356). No circumstances have arisen that would lead this court to depart from its prior decisions on this issue. In any event, this court's prior decisions on this issue are correct in law and sound in principle. Therefore, for the reasons that follow, the appeal is dismissed.

Jurisdiction and Standard of Review

3 Appeal lies to this court from an order of the LTB on a question of law: *Residential Tenancies Act*, SO 2006, c. 17 (the "*RTA*"), s. 210. The standard of review is correctness for a question of law: *Canada (Ministry of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras. 36-37.

Background Facts

4 The LTB found that rent arrears were $50,000. Ms Reed (the "Landlord") waived the claim for an order for payment of arrears in excess of $35,000 in order to proceed before the LTB, pursuant to s. 207(3) of the *RTA*. The LTB terminated the tenancy for non-payment of rent but also ordered that the Tenant could void the termination order upon payment by March 20, 2023 of the entirety of the arrears ($50,000) plus accrued and accruing rent of $10,000 per month, pursuant to s. 74 of the *RTA*.

5 Mr Rosen (the "Tenant" or the "appellant") takes the position that the Landlord's entitlement to payment of arrears above $35,000 was extinguished by the LTB's order for payment of $35,000, pursuant to s. 207(3) of the *RTA*, and that the LTB erred in ordering payment of a higher amount as a condition for voiding the order terminating the tenancy.

Prior Jurisprudence on this Issue

6 In a 2010, Ferrier J., sitting as a single judge of the Divisional Court, held as follows:

> To hold that the monetary cap applies to "the outstanding arrears of rent" would result in an absurdity. The defaulting tenant could continue *ad infinitum* to merely pay the monetary limit and continue in possession, all the while continuing in default. (*Horstein* v. *Royal Bank of Canada*, 2010 ONSC 3134, para. 13 (Div. Ct.))

This statement was in respect to s. 74(11) of the *RTA*, not s. 74(4), but the principle in issue is the same for the two subsections.

7 This court has concluded that the monetary jurisdiction of the LTB in the *RTA* limits the amount of an "order" that may be made for payment, and not the nominal value of all claims that may be adjudicated before the LTB: *Ryshpan* v. *Bayview Summit*, [2000] OJ No. 6054 (Div. Ct.).

8 The LTB has gone both ways on this issue. Some LTB decisions have found that "pay to stay" orders are limited to the monetary jurisdiction of the Board: *Galaxy Real Estate Core Ontario Properties LP v Deen,* 2022 CanLII 78938 (ON LTB); *Guo v Apiou*, 2021 CanLII 142621(ON LTB); *Divani v. Brown*, 2021 CanLII 147655 (ON LTB). Other LTB decisions have concluded that "pay to stay" terms may exceed the monetary jurisdiction of the Board: 2022 CanLII 56643 (ON LTB) and 2022 CanLII 127325 (ON LTB).

The Statutory Provisions

(a) Claims for Payment of Money

9 Section 207 of the *RTA* provides as follows:

> (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of $10,000 and the monetary jurisdiction of the Small Claims Court.
>
> (2) A person entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction.
>
> (3) If a party makes a claim in an application for payment of a sum equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order.

10 The current monetary jurisdiction of the Small Claims Court is $35,000.00: O. Reg. 626/00, s. 1. Thus, the LTB

may not order payment of more than $35,000.00 by virtue of *RTA*, s. 107(1) and O. Reg. 626/00, s. 1. A person wishing seeking an order for payment of more than $35,000 under the *RTA* may then do one of two things:

(a) bring the claim in the Ontario Superior Court (being the court of competent jurisdiction to hear a claim above the monetary jurisdiction of the Small Claims Court) to obtain an order for payment of the amount of the claim. In this event, the court could also grant an order terminating the tenancy and could exercise any other powers available to the LTB under the *RTA* in relation to the claim.

(b) Bring the claim before the LTB for "a sum equal to or less than" $35,000.00. In this event, the claimant's rights in excess of $35,000.00 "are extinguished once the Board issues its order."

So, the claimant has a choice to make: to use the faster, less expensive, less formal process before the Board, the claimant must limit the claim for an order for payment to $35,000.00. Or the claimant can pursue its full rights to payment before the Superior Court of Justice.

(b) Claims for Termination of Tenancy

11 Section 59 of the *RTA* provides as follows:

(1) If a tenant fails to pay rent lawfully owing under a tenancy agreement, the landlord may give the tenant notice of termination of the tenancy effective not earlier than,

(a) the 7th day after the notice is given, in the case of a daily or weekly tenancy; and

(b) the 14th day after the notice is given, in all other cases.

(c) The notice of termination shall set out the amount of rent due and shall specify that the tenant may avoid the termination of the tenancy by paying, on or before the termination date specified in the notice, the rent due as set out in the notice and any additional rent that has become due under the tenancy agreement as at the date of payment by the tenant.

(3) The notice of termination is void if, before the day the landlord applies to the Board for an order terminating the tenancy and evicting the tenant based on the notice, the tenant pays,

(a) the rent that is in arrears under the tenancy agreement; and

(b) the additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given.

12 Subsection 69(1) of the *RTA* provides:

A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under this Act....

13 Subsection 74(2) of the *RTA* provides:

An application by a landlord under section 69 for an order terminating a tenancy and evicting the tenant based on a notice of termination under section 59 shall be discontinued if, before the Board issues the eviction order, the Board is satisfied that the tenant has paid to the landlord or to the Board,

(a) the amount of rent that is in arrears under the tenancy agreement;

(b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given; and

(c) the landlord's application fee.

14 Subsections 74(3) and (4) of the *RTA* provide as follows:

(3) An order of the Board terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 59 shall,

(a) specify the following amounts:

(b) the amount of rent that is in arrears under the tenancy agreement,

(ii) the daily amount of compensation that must be paid under section 86, and

(iii) any costs ordered by the Board;

(b) inform the tenant and the landlord that the order will become void if, before the order becomes enforceable, the tenant pays to the landlord or to the Board the amount required under subsection (4) and specify that amount; and

(c) if the tenant has previously made a motion under subsection (11) during the period of the tenant's tenancy agreement with the landlord, inform the tenant and the landlord that the tenant is not entitled to make another motion under that subsection during the period of the agreement.

(4) An eviction order referred to in subsection (3) is void if the tenant pays to the landlord or to the Board, before the order becomes enforceable,

(a) the amount of rent that is in arrears under the tenancy agreement;

(b) the amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given;

(c) the amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87;

(d) the amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87; and

(e) the costs ordered by the Board.

15 Subsection 74(11) of the *RTA* provides:

A tenant may make a motion to the Board, on notice to the landlord, to set aside an eviction order referred to in subsection (3) if, after the order becomes enforceable but before it is executed, the tenant pays an amount to the landlord or to the Board and files an affidavit sworn by the tenant stating that the amount, together with any amounts previously paid to the landlord or to the Board, is at least the sum of the following amounts:

1. The amount of rent that is in arrears under the tenancy agreement.
2. The amount of additional rent that would have been due under the tenancy agreement as at the date of payment by the tenant had notice of termination not been given.
3. The amount of NSF cheque charges charged by financial institutions to the landlord in respect of cheques tendered to the landlord by or on behalf of the tenant, as allowed by the Board in an application by the landlord under section 87.
4. The amount of administration charges payable by the tenant for the NSF cheques, as allowed by the Board in an application by the landlord under section 87.
5. The costs ordered by the Board.

16 The effect of these provisions is that the LTB may make an order to terminate a tenancy for non-payment of rent: the landlord gives notice of termination for non-payment (s. 59), following which the landlord may apply to the LTB for an order terminating the tenancy (s. 69). The tenant may avoid eviction, before the LTB issues an eviction order, by paying everything owing under the lease plus the fee paid by the landlord to commence eviction proceedings before the LTB (s. 74(2)). If the tenant does not do this, and the LTB issues an eviction order, the LTB

specifies the amount the tenant must pay to void the eviction order before it becomes enforceable (s. 74(3)), and if the tenant pays that amount before the eviction order "becomes enforceable", then the eviction order is void (s. 74(4)). Even after the eviction order has become enforceable, if the order has not yet been executed, the tenant may move before the LTB to set aside the eviction order upon proof of payment of rent obligations under the lease and the landlord's costs and expenses (s. 74(11)).

17 The obligation to pay rent is a tenant's fundamental obligation: *Schwartz* v. *Fuss*, 2021 ONSC 1159 (Div. Ct.); *Gencay* v. *Capreit Limited Partnership*, 2021 ONSC 8293 (Div. Ct.); *Galaxy Real Estate Core Ontario LP* v. *Kirpichova*, 2023 ONSC 593 (Div. Ct.). A landlord is entitled to obtain an eviction order where a tenant is in default of this fundamental obligation. However, the *RTA*, being remedial in nature, and seeking to protect the interests of tenants in their security of tenure in their home, affords tenants an opportunity to cure their default on notice of the landlord's claim, prior to that claim being adjudicated by the LTB, and even after the LTB's decision. In each of these circumstances, the tenant may cure the default by making the landlord whole - that is, by paying arrears "under the tenancy agreement" plus accrued occupancy charges and the landlord's costs.

18 The essence of the LTB order, in each case, is an order terminating the tenancy. If the tenant does not void the order, and it is enforced by removing the tenant, the order is then spent and may not subsequently be enforced as an order for payment of money.

(c) Condition for Setting Aside an Eviction Order is not an Order for the Payment of Money within the meaning of s. 207 of the *RTA*

19 An "order for the payment of money" within the meaning of s. 207 of the *RTA* is an LTB order that may be registered with the court and enforced in the same way as an "order for the payment of money" made by a court. Orders terminating a tenancy under s. 69 of the *RTA* are not orders for the payment of money. They are orders terminating a tenancy. They are enforced by removing the tenants from possession of the premises and giving possession of those premises to the landlord. Once that has been done, the orders are "spent", having been "executed". Orders made pursuant to s. 74 are orders terminating a tenancy, not orders for the payment of money.

20 The appellant's arguments do not seriously contest this analysis. Rather, they focus on this language in subsection 207(3) of the *RTA*: "...all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order." Arrears under the lease that exceed the monetary jurisdiction of the LTB are "extinguished" once the LTB "issues its order" and thus, on calculating the amounts required to be paid to void a termination order, "rent in arrears under the tenancy agreement" does not include arrears the rights to which have been "extinguished".

21 The result of this approach could be the very "absurdity" noted by Ferrier J. in *Horsheim*: a tenant could fail profoundly to meet their obligation to pay rent, running arrears over $35,000, and then "cure the default" by paying $35,000, obtaining a rent reduction proportional to the extent of their profound default. The only way to avoid this situation, for a landlord, would be to bring proceedings in the Superior Court - with much higher costs and delays, and adding significantly to the burdens of a court system that is already under considerable strain.

22 The sense of absurdity is all the greater when one considers the continuing accrual of arrears. In this case, the arrears (accruing at $10,000 per month) were $50,000 at the time of the LTB decision but grew an additional $20,000 over the course of the time required to give the Tenant an opportunity to cure pursuant to s. 74 of the *RTA*. It could not have been the intention of the Legislature to create a situation whereby a tenant could obtain an ever-greater reduction in rent arrears, at the expense of the landlord, by delay in curing its default in meeting its fundamental obligation to pay rent. These provisions were designed to afford tenants a significant opportunity to cure their default and preserve their tenancy, not to afford tenants an extended period of rent abatement.

23 Alternatively, if the appellant's argument were given effect, it would still permit landlords to pursue eviction before the LTB but would require landlords to defer a request for an order for payment of arrears until after termination of the tenancy. It would require the LTB to make its order for payment only after termination had been ordered and executed. In other words, by requiring additional steps and by following a particular order of

adjudication, the landlord and the LTB could defer making an "order for the payment of money" until after eviction had taken place - making the process more cumbersome and expensive for the LTB and for the parties.

24 It is in this context that the LTB stated as follows on this issue in this case:

> While the Board cannot order a person to pay more than $35,000.00 in accordance with [s.207(1)] of the Act, I find that this does not apply to the "stay and pay" option set out in the order below. The order terminates the tenancy and requires the tenant to pay the amount up to the Board's monetary jurisdictional limit of $35,000.00 plus the cost of filing the application. The tenant can choose to pay the full amount of rent, and costs owing to the Landlord if they choose not to vacate the unit. This amount is optional and only required if the Tenant elects to continue the tenancy. Therefore, the Board is not ordering this amount to be paid and is not ordering an amount that exceeds the limit. (Decision, para. 4)

25 The standard of review on a question of law is correctness, but this court "should take the administrative decision maker's reasoning into account - and indeed, it may find that reasoning persuasive and adopt it...." (*Vavilov*, para. 54; see also *Smith* v. *Youthlink Youth Services*, 2022 ONCA 313, para. 17; *Reisher* v. *Westdale Properties*, 2023 ONSC 1817, paras. 9-10). As explained above, the LTB's reasoning on this issue is persuasive and gives effect to the different provisions in the *RTA* governing orders for payment of money and orders for termination of a tenancy. It follows longstanding authority from this court. The contrary interpretation would result in an unfair windfall to tenants, and would likely have the long-term effect of encouraging transfer of a significant number of landlord and tenant disputes to the Superior Court.

Disposition

26 The appeal is dismissed, with costs payable by the appellant to the Landlord fixed at $10,000, inclusive, payable within thirty days. There shall be no costs for or against the LTB.

D.L. CORBETT J.
J. LEIPER J.:— I agree.
K. MUSZYNSKI J.:— I agree.

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Minas v. Adler

Ontario Judgments

Ontario Superior Court of Justice

Divisional Court - Toronto, Ontatio

H.E. Sachs, M.N. Varpio and S. O'Brien JJ.

Heard: November 22, 2022 by videoconference.

Judgment: December 2, 2022.

Divisional Court File No.: DC-22-073-Appeal

[2022] O.J. No. 5323 | 2022 ONSC 6706

Between Victor Minas and Janet Minas, Appellants, and Kerry Evan Adler and Eagle Capital Corporation, Respondent

(71 paras.)

Counsel

James P. McReynolds, for the Appellants/Landlords.

Benjamin Salsberg, for the Respondent/Tenants.

David S. Strashin, for the Respondents/Tenants.

Eli Fellman, for the Landlord and Tenant Board.

Karen Andrews and *Dania Majid*, for the Intervener, Advocacy Centre for Tenants Ontario.

REASONS FOR DECISION

The following judgment was delivered by

THE COURT

1 Mr. Kerry Adler is the President and CEO of Skypower Services, a multinational company which, prior to the COVID-19 pandemic, had offices in Toronto and Dubai.

2 Victor and Janet Minas (the "Landlords") own a luxury home located at 20 Sandringham Drive, Toronto, Ontario. In the late 2010's, the Landlords decided to rent out the premises and reside elsewhere.

3 In late 2019, Mr. Adler rented the home from the Landlords with the intention of residing there. Mr. Adler and his personal corporation, Eagle Capital Corporation (the "Tenants") signed the lease. The lease was for a period of one-year, following which the tenancy continued on a month-to-month basis.

4 In March 2020, the COVID-19 pandemic struck. Work and business changed as offices closed and people began to work from home. Skypower Services was affected by the pandemic such that it closed its offices in Toronto. Mr.

Adler moved with his family to Dubai in December 2020, although the Tenants continued to pay rent to the Landlords.

5 In August 2021, Mr. Minas attended at the premises and found them to be -- according to him -- in a state of disrepair. He terminated the tenancy and took possession of the house without obtaining an order from the Landlord and Tenant Board (the "Board"). On August 18, 2021, the Tenants filed an action in the Ontario Superior Court of Justice seeking monetary damages and possession of the home. That fall, Dow J. dismissed an urgent motion seeking possession of the home. While the decision was under reserve, the Tenants commenced an application before the Board seeking, *inter alia*, to re-take possession of the premises. The Landlords then filed an application seeking a declaration that the *Residential Tenancies Act* (the "*RTA*") did not apply to the tenancy.

6 On January 24, 2022, Member Shea of the Board found that the *RTA* applied to the tenancy, and he ordered that the Tenants be given possession of the premises. The Landlords appeal the Board's decision.

7 For the following reasons, I would dismiss the Landlords' appeal.

FACTS

8 At the end of June 2019, the Tenants leased the premises in question from the Landlords. Mr. Adler resided in the premises with his family. The Tenants paid $18,000/month in rent.

9 On December 14, 2020, Mr. Adler and his family left for Dubai in part because the COVID-19 pandemic caused Skypower to close its Toronto offices. They have continued to reside in Dubai since that date. Nonetheless, the Tenants continued to pay rent to the Landlords.

10 It is uncontested that no one lived in the residence between December 14, 2020 and August 15, 2021. On that latter date, Mr. Minas attended the residence to make a repair. Mr. Minas testified in an affidavit filed in support of an injunction motion (which will be described later in these reasons) that he discovered that the home was in a state of disrepair. Mr. Minas also testified that he discovered that certain business activities were taking place at the residence.

11 The Landlords purported to terminate the tenancy forthwith. The Landlords changed the locks on the residence. The Landlords moved back into the home. On August 18, 2021, the Tenants filed an action in the Superior Court of Justice seeking both possession of the residence as well as $10,000,000 in general damages and $200,000 in punitive damages.

12 The Tenants brought an urgent motion seeking an injunction giving them possession of the residence. On September 12, 2021, Dow J. of the Superior Court of Justice heard the motion and reserved judgment. In an affidavit sworn in support of this motion, Mr. Adler deposed that his personal assistant worked in the residence while he was in Dubai. The assistant performed administrative business functions associated with Mr. Adler's personal affairs as well as Eagle Capital's "passive" investments. Mr. Adler also deposed that he intended to return to Toronto in order to facilitate his child's attendance at a Toronto private school.

13 On October 6, 2021, while Dow J.'s reasons were under reserve, the Tenants commenced an application before the Board seeking possession of the premises. Other than the claim for monetary damages, the Board application sought identical relief to the relief sought in the Superior Court action.

14 On October 22, 2021, Dow J. released his reasons dismissing the injunction (2021 ONSC 6224). At paragraphs 7 and 8, Dow J. stated:

> Mr. Adler and Eagle Capital Corporation commenced this action on August 18, 2021 seeking injunctive relief returning the premises to them as well as $10,000,000.00 in general damages as well as $200,000.00 in punitive damages. This motion was sought to be heard on an urgent basis. As part of the plaintiffs' evidence, it was deposed that Mr. Adler intended to return to the premises to facilitate one of the children

(from a previous relationship) beginning to attend Crescent School as of September 7, 2021. I was advised the child did return to attend the school and is residing with his mother in Toronto who shares custody of him with Mr. Adler.

Mr. Adler and the rest of his family remain in the United Arab Emirates. During cross-examination of Mr. Adler, remotely, on August 30, 2021, it was acknowledged no air tickets to Toronto had been purchased and a re-opening date for Skypower Services offices in Toronto had not been set.

15 Dow J. then considered the test for granting an injunction as described in *RJR-MacDonald Inc. v. Canada (Attorney* General) 1994 1 S.C.R. 311. At paras. 13 to 15 of his reasons, Dow J. dismissed the Tenants' injunction motion based upon the second prong of the *RJR-MacDonald* test. As emphasized in bold below, Dow J. expressed the view that the propriety of the eviction should be dealt with by the Board:

> Regarding the second test whether the moving party tenant will suffer irreparable harm if the injunctive relief is not granted, I have concluded that they will not. Mr. Adler's private corporation can be operated from a variety of locations and not necessarily a private residence which raises application of the *Residential Tenancies Act*, supra.
>
> Mr. Adler has resided in the United Arab Emirates since December, 2020. The evidence is his employer, Skypower Services pays for his accommodations in that location. It is clear he has and continues to perform the duties of his occupation from that location, being other than Toronto. The primary concern of accommodation for his son to attend Crescent School and live nearby has been secured, likely at an optimal location, that is, with his mother who has shared custody.
>
> The Supreme Court of Canada has described the nature of irreparable harm as being something that cannot be quantified in monetary terms or cured by collecting damages from the other. I was not directed to any evidence of such harm. **To the contrary, it would appear the propriety of the eviction of the plaintiffs/tenants should first be dealt with by the Landlord and Tenant Board. If any claims for damages remain, this action seeks same and remains available**. [Emphasis added.]

16 Dow J. then addressed the third prong of the *RJR-MacDonald* test at paras 16 and 17:

> Regarding the third part of the test, being which party would suffer the greater harm from granting or refusing the remedy sought until there is a decision on the merits, I have concluded this also rests in favour of the defendants/landlords. There is evidence that this luxury property was not being kept up to a standard that one would expect. That is perhaps understandable given Mr. Adler's absence from the property since December, 2020. In addition, the evidence regarding Mr. Adler's return to the premises was uncertain if not speculative.
>
> **The defendants' decision to move back in, in my view, provides the best opportunity for the property to be properly maintained pending disposition of all of the disputes between the parties before the Landlord and Tenant Board**. This will also benefit the plaintiffs/ tenants if determination of the issue of ending their tenancy is resolved in their favour. In this regard, there is evidence that the plaintiffs/tenants' refusal to pay the water bill (which has been added to the tax bill and paid by the defendants/landlords) relates to it being excessive as a result of [a] leak in the pool. With the landlord in possession, the steps necessary to determine that [sic] the water leak issue can progress more efficiently. Further, the defendant/landlords' testified insurance on the property requires them to be living in it and that refinancing of mortgages depends on the defendants/landlords being in possession. [emphasis added]

17 The parties attended before the Board on November 12, 2021. On January 24, 2022, the Board released a decision wherein Member Shea made the following orders:

1. Application TNL-31819-21 is withdrawn at the request of the Landlords.
2. The Act is applicable to the rental unit.
3. The Landlords shall immediately allow the Tenants to recover possession of the rental unit and provide to the Tenants: (a) keys to the doors of the rental unit; and (b) any pass, access or other codes required for the Tenants to have full and unfettered access to the rental unit.

4. If the Landlords do not allow the Tenants to recover possession of the unit, the Tenants may file this order with the Court Enforcement Office (Sheriff) so that the order may be enforced.

5. Upon receipt of this order, the Enforcement Office is directed to give possession of the unit to the Tenants.

6. A further order will be made with respect to costs.

18 Member Shea stated at the outset of his reasons that "[t]he parties requested that I consider (and rely on) the evidence that was before the Superior Court when it heard [the injunction motion decided by Dow J.]".

19 At paragraphs 4 and 5 of the "Facts" section of his reasons, Member Shea stated:

> The relationship between the Landlords and the Tenants -- or at least Mr. Adler -- has deteriorated for reasons that are not particularly relevant to the applications that are before me. Suffice as to say [sic] that there have been, as noted above, a number of applications commenced by the Landlords seeking to evict the Tenants and a number of those applications are pending before the Board.
>
> The Tenants' T2 application was brought because, on August 16, 2021, the Landlord purported to terminate the tenancy and evict the Tenants without an order of the Board or the Tenants' consent based on the allegations that: (a) the Act had ceased to apply to the rental unit; and (b) the Tenants had breached the applicable tenancy agreement.

20 Member Shea then held that no one had stayed overnight at the residence between December 2020 and August 15, 2021 and that the Landlords discovered that the Adlers were not residing at the premises on August 15, 2021.

21 At paragraph 31, Member Shea noted that the Board has exclusive jurisdiction to determine whether the LTA applies to a rental unit as per *Firm Capital Management v. Heather Tessier*, 2019 ONSC 55 (CanLII). At paragraphs 32 and 33, Member Shea stated:

> The act applies to a rental unit, unless the rental unit is of a type that is identified as being excluded from the operation of the Act. [**See Act, ss 3(1) and 5]** The Act defines 'rental unit' to mean any living accommodation used or intended for use as rented residential premises. **[Act, s. 2(1)]** This definition contains two components. For the Act to apply, a unit must: (a) be 'living accommodations; and (b) be used or intended for use as 'rented residential premises'. **[*Matthews v. Algoma Timberlakes Corporation*, 2010 ONCA 468 (CanLII)]**
>
> The Act does not include a definition of 'living accommodations' or 'residential premises', but I do not believe that there is much dispute that the Act is intended to apply to rental units in which individuals live or are intended to live as opposed to those that are used or intended to be used for commercial activity -- i.e. to generate business revenue. However, the application of the Act is not excluded, in my view, simply because some commercial activity is carried out from a rental unit. The Act applies to living accommodations notwithstanding, for example, that a tenant operates a hobby business from home, brings work home, works from home or participates in Zoom meetings from home. [Emphasis in original.]

22 In determining that the *RTA* applied to the tenancy, the Member stated at paras 34 to 36:

> In this case, there can be no possible dispute that the rental unit -- a single-family home -- is 'living accommodations'. The second requirement of the definition of 'rental unit' is disjunctive and it is sufficient for the purposes of this application for me to find that the rental unit is 'intended for use as rented residential premises', which I do below, but I will also consider other factors such as the *de facto* use, and the predominate [sic] purpose and use of the rental unit in case I am wrong.
>
> The fact that the Adlers may have stopped living in the rental unit is not determinative as to whether the Act applies. The Tenants included Eagle Capital as well as Mr. Adler. Moreover, as was noted by the Tenants, a tenant has a right to occupy a rental unit based on paying rent for the use of the unit and a tenant need not reside in a unit to maintain a tenancy so long as he or she continues to pay rent. The Act defines a rental unit to mean 'any living accommodation used or **intended for use** as rented residential premises'

(emphasis added). And subsection 2(3) of the Act provides that a tenant does not abandon a rental unit so long as he or she continues to pay rent.

I am prepared to accept that a tenancy can cease to be residential such that the Act ceases to apply. Where, however, a landlord decides for itself that the Act has ceased to apply and exercises 'self-help' to terminate a tenancy and evict a tenant, that landlord runs the risk that the Board will find that the Act continues to apply and that the landlord has effected an illegal lock-out. That is the risk that Landlords took on August 16, 2021 when they purported to terminate the tenancy and evict the Tenants without an order from the Board. [Emphasis in original.]

23 The Member then continued in his analysis. He considered the Landlords' submission that the four-prong test described in *Optimal Space Inc. v. Margana Holdings Inc.*, 2005 CanLII 14142 (ONSC) ought to be applied in order to determine whether a rental unit is subject to the *RTA*. Accordingly, the Member considered:

1. The intention of the parties;
2. The *de facto* use of the premises;
3. The predominant purpose or use of the rental unit; and
4. The relationship as between the landlord and the tenant in question.

24 The Member examined the evidence before him and found the following:

1. The intention of the parties was that the *RTA* would apply to the tenancy;
2. There was no evidence upon which he could reasonably find that the *de facto* use of the premises was anything but residential. Specifically, the Member examined the duration of the tenancy, and found that there were no commercial or business activities being conducted at the rental unit that would preclude the application of the *RTA*. The Member reviewed pictures taken by the Landlord and determined that the "workstation [in the pictures] appears, based upon the Landlords' pictures, to be no different than what many Ontarians have set up in their homes so that they can work from home and participate in Zoom or other remote meetings". The Member also reviewed the Landlords' pictures of the home office and drew the same conclusions.
3. Given the foregoing, the Member found that the predominant use of the premises was a residential use.
4. Finally, the relationship between the parties did not suggest that the *RTA* was inapplicable.

25 Accordingly, the Member found that the *RTA* applied to the tenancy as per *Optimal Space v. Margana*.

26 With respect to whether the Board application constituted an abuse of process, the Member considered a variety of cases dealing with abuse of process, specifically *Maynes v. Allen-Vanguard Technologies Inc. (Med-Eng Systems Inc.)* 2011 ONCA 125 (CanLII); *Birdseye Security Inc. v. Milosevic*, 2020 ONCA 355 (CanLII); and *Trindade v. Jantzi* 2021 ONSC 1927 (CanLII). The Member then quoted Dow J's statement that "[t]he defendants' decision to move back in, in my view, provides the best opportunity for the property to be properly maintained pending disposition of all the disputes between the parties before the Landlord and Tenant Board". The Member considered *Trindade v. Jantzi* and determined that, unlike the case in *Trindade*, there was on ongoing tenancy between the Landlords and the Tenants and that there was utility to the Board hearing the matter "in the sense that it [the Board application] seeks relief [possession of the premises] under the Act on a matter that is within the specialized knowledge and experience of the Board and is not being used for an improper purpose".

27 The Member then considered what he found to be possible "forum shopping" by the Tenants:

While I do not in any way condone what appears at least to be 'forum shopping' by the Tenants, I do not find, based on the facts of these cases, that the interest of justice would be served by what the Landlords are requesting. On the T2 application, the Tenants are seeking to be put back into possession of the rental unit on the basis that there has been a breach by the Landlords of section 24 of the Act. Subject to the

Landlords' argument with respect to my discretion to refuse to grant relief, the relief being requested by the Tenants on the T2 flows naturally from the uncontested facts and my determination of the Landlords' A1 application that the rental unit is subject to the Act.

28 The Member then concluded that the Board was the proper forum for the matter at hand:

While admittedly the A1 and the T2 applications were not issued until after Justice Gow [sic] heard the Tenants' motion, there is nothing in Justice Dow's Reasons for Decision that indicates to me that His Honour was contemplating that certain of the landlord-and-tenant disputes between the parties would be determined by the Superior Court while others would be determined by the Board. In paragraph 13, Justice Dow alludes at least to the fact that the application of the Act is among the issues to be resolved by the Board and it seems to me that if His Honour contemplated that the application of the Act would be determined by the Board and it stands to reason that the Board would also determine whether there was a breach of the Act and what, if any, remedy would be provided.

The approach of determining the A1 and then leaving it to the Superior Court to determine the consequences that flow from that in terms of whether the Tenants should be put back into possession of the rental unit would not, in my view, result in the just, most expeditious and least expensive determination of the issues between the Landlords and the Tenants. Determining the A1 and then leaving the issue as to whether the Tenants ought to be put back into possession of the rental unit to be determined by the Superior Court at some point in the future would, in my view, result in the **least** expeditious and **most** expensive determination of the issues raised on these applications. While my determination of the T2 is unlikely to end the Landlords' efforts to evict the Tenants, it will at least fully resolve the issues that have been put before me by the parties on the A1 and T2 applications that are before me. [Emphasis in original.]

29 Finally, the Member determined that the Landlords had breached section 24 of the *RTA* by:

illegally locking the Tenants out of the rental unit. There is no dispute that: (a) the Landlords changed the locks of the rental unit; and (b) they did so without an order from the Board or the consent of the Tenants. The Landlords' only viable defence to the Tenants' allegations on the T2 [the application regarding lawful possession of the rental unit] is the assertion that the Act does not apply.

POSITION OF THE PARTIES

30 The Landlords appeal the Board's decision and advance four arguments on appeal[1] :

1. The Board did not have jurisdiction to hear the matter as the Superior Court of Justice had exclusive jurisdiction;
2. If the Board did have jurisdiction, the Board application ought to have been dismissed as being an abuse of process;
3. The Member's finding under s. 9 of the *RTA* was unduly limited in that he only considered whether the Tenants "intended" to use the rental property as a residential tenancy. The Member failed to adequately address the governing test under *Optimal Space*; and
4. The Member's interpretation of the term "vacant" under s. 31(3) of the *RTA* was incorrect. The premises were occupied by the Landlords at the time of the hearing and, as such, the premises were not "vacant". The Member could not, therefore, grant the Tenants possession of the premises.

31 The Tenants disagree with the Landlords' positions. They submit that:

1. The Board and the Superior Court of Justice have concurrent jurisdiction to hear matters in these proceedings based upon the appropriate interpretation of the *RTA*. The Board therefore had jurisdiction to hear the matter;
2. The Board application was not an abuse of process;

3. The Member properly applied the law in determining that the Tenants intended to use the premises as a residential unit; and
4. The Member's interpretation of the term "vacant" is correct because the Landlords' interpretation would enable future landlords to illegally take possession of a rental unit and thereby thwart the Board's ability to protect innocent tenants.

32 The Board submits that Board had jurisdiction to hear the matter and that the Member's interpretation of the term "vacant" was appropriate in the circumstances.

33 The intervenor, the Advocacy Centre for Tenants Ontario ("ACTO"), submits, *inter alia*, that the term "vacant" must not only exclude situations where a landlord takes possession of a rental unit, but also exclude situations where a landlord, having illegally terminated a tenancy, rents the premises to a third party.

ANALYSIS

Standard of Review

34 Section 210 of the *RTA* deals with appeals from the Board. Sections 210(1), (4) and (5) state:

Appeal rights

210 (1) Any person affected by an order of the Board may appeal the order to the Divisional Court within 30 days after being given the order, but only on a question of law. 2006, c. 17, s. 210 (1).

...

Powers of Court

(4) If an appeal is brought under this section, the Divisional Court shall hear and determine the appeal and may,

(a) affirm, rescind, amend or replace the decision or order; or

(b) remit the matter to the Board with the opinion of the Divisional Court. 2006, c. 17, s. 210 (4).

Same

(5) The Divisional Court may also make any other order in relation to the matter that it considers proper and may make any order with respect to costs that it considers proper. 2006, c. 17, s. 210 (5).

35 The parties agree, and I accept, that when dealing with the appeal of an alleged error of law, the standard of review is one of correctness as per *Canada (Minister of Citizenship & Immigration) v. Vavilov*, 209 SCC 65 at para. 37. In engaging in this review, the court is entitled to replace the tribunal's view of the law with its own as per *Vavilov* at para. 54 and *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8.

Jurisdiction

36 Section 168(2) of the *RTA* describes the Board's jurisdiction to deal with matters under the *RTA*:

Board's jurisdiction

(2) The Board has exclusive jurisdiction to determine all applications under this Act and with respect to all matters in which jurisdiction is conferred on it by this Act. 2006, c. 17, s. 168 (2).

37 Section 207 of the *RTA* describes situations where the Superior Court of Justice has jurisdiction based upon financial considerations:

Monetary jurisdiction of Board

> 207 (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of $10,000 and the monetary jurisdiction of the Small Claims Court. 2006, c. 17, s. 207 (1).
>
> Same
>
> (2) A person entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction. 2006, c. 17, s. 207 (2).
>
> Same
>
> (3) If a party makes a claim in an application for payment of a sum equal to or less than the Board's monetary jurisdiction, all rights of the party in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order. 2006, c. 17, s. 207 (3).
>
> Minimum amount
>
> (4) The Board shall not make an order for the payment of an amount of money if the amount is less than the prescribed amount. 2006, c. 17, s. 207 (4).

38 The Landlords are effectively asking this court to interpret sections 168 and 207 of the *RTA* to read that, where both Board and Superior Court proceedings are commenced, the Superior Court acquires exclusive jurisdiction over the proceedings.

39 I disagree with that position.

40 The Court of Appeal for Ontario recently reiterated the approach to be taken when engaging in statutory interpretation in *R. v. Walsh*, 2021 ONCA 43 at paras. 59 and 60:

> It is trite law that the modern approach to statutory interpretation requires that "the words of an Act must be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Bell ExpressVu Ltd. Partnership v. Rex*, [2002] 2 S.C.R. 559, [2002] S.C.J. No. 43, 2002 SCC 42, at para. 26.
>
> The starting point is to determine the ordinary meaning of the text: *R. v. Wookey*, [2016] O.J. No. 4158, 2016 ONCA 611, 351 O.A.C. 14, at para. 24. At para. 25 of *Wookey*, quoting from *Ruth Sullivan, Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014), *Pharmascience Inc. v. Binet*, [2006] 2 S.C.R. 513, [2006] S.C.J. No. 48, 2006 SCC 48, at para. 30, and *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724, [1993] S.C.J. No. 114, at p. 735 S.C.R., this court states that ordinary meaning "refers to the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context" and is "the natural meaning which appears when the provision is simply read through". In other words, the "plain" or "ordinary" meaning of a word is not dictated by its dictionary meaning nor is it frozen in time.

41 Given the foregoing, the Board was correct in interpreting its own statute. The language of section 168 is clear, namely that the Board has *exclusive jurisdiction* to hear matters falling within the purview of the *RTA*. Conversely, under section 207 of the *RTA*, the Superior Court of Justice *may* exercise any power specifically allocated to the Board when a plaintiff/applicant seeks certain monetary relief. The discretionary nature of the Superior Court's powers as delineated by the statute is such that the legislature gave the Superior Court the ability to decide whether it wished to exercise the powers in question. In this case, Dow J. chose not to exercise these powers by stating "it would appear the propriety of the eviction of the plaintiffs/tenants should first be dealt with by the Landlord and Tenant board. If any claims for damages remain, this action seeks same and remains available."

42 As such, the Board retained jurisdiction to hear the matter.

43 This ground of appeal is therefore dismissed.

Abuse of Process

44 In *Trindade v. Janzi*, the Divisional Court considered a situation where a Superior Court order terminated a tenancy. Subsequent to the entering of the consent order, an application was commenced at the Board for a determination that the *RTA* applied to the tenancy. The Divisional Court determined that the Board application was an abuse of process.

45 Writing for the court, Favreau J. (as she then was), stated at para. 27:

> As held in *Maynes v. Allen-Vanguard Technologies Inc. (Med-Eng Systems Inc.)*, 2011 ONCA 125, at para. 36, the "doctrine of abuse of process seeks to promote judicial economy and to prevent a multiplicity of proceedings". In *Birdseye Security Inc. v. Milosevic*, 2020 ONCA 355, at para. 16, the Court of Appeal emphasized that a multiplicity of proceedings raising the same issues does not necessarily give rise to abuse of process in all cases. A finding of abuse of process depends on the circumstances and context of the case.

46 Favreau J. then considered the unique aspects of *Trindade v. Janzi*. First, she found that the issues raised at the Board were identical to those raised in the Superior Court. Second, she found that no monetary remuneration was sought at the Board. Third, she found that there was no ongoing tenancy in *Trindade v. Janzi*. Accordingly, the Board proceedings were an abuse of process.

47 At para. 32, Favreau J. stated that:

> As a general rule, there is no doubt that the Board or a court should be cautious before finding that it is an abuse of process for a party to bring an application before the Board even if there are parallel proceedings before the court. The Board is meant to be a less expensive and more accessible forum in which tenants or landlords can assert their rights. However, in the unique circumstances of this case, where the only apparent purpose of the respondents' application before the Board is to shield against a judgment by the Court in proceedings in which the respondents can raise, and have raised, the same issues as before the Board, I have no difficulty in finding that the respondents' application to the Board for rent abatement is an abuse of process.

48 In the case before us, the Member quoted the correct law and considered the evidence, including the Landlords' putative forum shopping. On the aggregate, the Member found that the largely duplicative Board proceeding was not abusive in so far as the Board hearing was the most efficient use of the court's time and the parties' money. This view accords with the court's view in *Trindade v. Janzi*. Further, the Member was correct when he found that, unlike *Trindade v. Janzi*, there was an ongoing tenancy in the matter being determined by him. As such, the factual matrix underpinning the finding of abuse of process in *Trindade v. Janzi* was not present in the instant case.

49 Further, in this case, Dow J. effectively required the parties to attend before the Board when he stated:

> To the contrary, it would appear the propriety of the eviction of the plaintiffs/tenants should first be dealt with by the Landlord and Tenant Board. If any claims for damages remain, this action seeks same and remains available ...
>
> The defendants' decision to move back in, in my view, provides the best opportunity for the property to be properly maintained pending disposition of all of the disputes between the parties before the Landlord and Tenant Board.

50 It is difficult to conceive of how a Board proceeding could constitute an abuse of process if the parties were being invited by the Superior Court to attend before the Board.

51 Given the foregoing, the Member did not err in law in his treatment of abuse of process. There is no basis for

this court to interfere in his determination that the Board proceeding did not constitute an abuse of process despite the Tenant's forum shopping in that the Board hearing was the most efficient process available to the parties.

52 This ground of appeal is dismissed.

The Definition of "Intended For Use"

53 Section 2(1) of the *RTA* defines a "rental unit" as follows:

> "rental unit" means any living accommodation used or intended for use as rented residential premises, and "rental unit" includes,
>
> (a) a site for a mobile home or site on which there is a land lease home used or intended for use as rented residential premises, and
>
> (b) a room in a boarding house, rooming house or lodging house and a unit in a care home; ("logement locatif")

54 Section 9 of the *RTA* gives the Board the power to make determinations under the *RTA*:

> Application to determine issues
>
> 9 (1) A landlord or a tenant may apply to the Board for an order determining,
>
> (a) whether this Act or any provision of it applies to a particular rental unit or residential complex;
>
> (b) any other prescribed matter. 2006, c. 17, s. 9 (1).
>
> Order
>
> (2) On the application, the Board shall make findings on the issue as prescribed and shall make the appropriate order. 2006, c. 17, s. 9 (2).

55 The Landlords submit that the Member failed to adequately consider whether the premises in question constituted a "rental unit" subject to the *RTA*. Accordingly, the Landlords submit that the Member committed an error of law.

56 The Landlords are incorrect in this submission. First, the Member considered the relevant evidence before him. He accepted Mr. Adler's affidavit evidence that the Tenants intended to return to Toronto. Irrespective of any existing or non-existing corroborating evidence for this position, the Member was entitled to accept Mr. Adler's evidence in this regard. Having done so, the Member was entitled to find that it was the parties' intention that the premises would be used as a "rental unit" as per the definition of "rental unit" and that the *RTA* therefore applied to the tenancy under s. 9(1)(a) of the *RTA*. No error was committed by the Member in making such a finding. I also note that any appeal concerning the Member's consideration of the evidence is a question of mixed fact and law and is not reviewable by this court given the *RTA*'s mandate that the Divisional Court only entertain appeals based upon alleged questions of law.

57 Further, the Member considered *Optimal Space v. Margana Holdings*. The Member considered the relevant evidence and made findings based upon that evidence. Again, no error was committed in his analysis. Further, this ground of appeal is also based upon a question of mixed fact and law, which is not in the Divisional Court's purview as noted above.

58 This ground of appeal is therefore dismissed.

Were The Premises "Vacant"?

59 Section 1 of the *RTA* sets out the purposes of the *RTA*:

> The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and

responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. 2006, c. 17, s. 1.

60 Section 29(1) of the *RTA* empowers a tenant to make an application to the Board under certain circumstances:

Tenant applications

29 (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:

...

5. An order determining that the landlord, superintendent or agent of the landlord has altered the locking system on a door giving entry to the rental unit or the residential complex or caused the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.

6. An order determining that the landlord, superintendent or agent of the landlord has illegally entered the rental unit. 2006, c. 17, s. 29 (1).

61 Section 31(1) of the *RTA* describes orders that the Board may make if the Board finds that a landlord engaged in impugned conduct under s. 29 of the *RTA*:

Other orders re s. 29

31 (1) If the Board determines that a landlord, a superintendent or an agent of a landlord has done one or more of the activities set out in paragraphs 2 to 6 of subsection 29 (1), the Board may,

(a) order that the landlord, superintendent or agent may not engage in any further activities listed in those paragraphs against any of the tenants in the residential complex;

(b) order that the landlord, superintendent or agent pay a specified sum to the tenant for,

(i) the reasonable costs that the tenant has incurred or will incur in repairing or, where repairing is not reasonable, replacing property of the tenant that was damaged, destroyed or disposed of as a result of the landlord, superintendent or agent having engaged in one or more of the activities listed in those paragraphs, and

(ii) other reasonable out-of-pocket expenses that the tenant has incurred or will incur as a result of the landlord, superintendent or agent having engaged in one or more of the activities listed in those paragraphs;

(c) order an abatement of rent;

(d) order that the landlord pay to the Board an administrative fine not exceeding the greater of $10,000 and the monetary jurisdiction of the Small Claims Court;

(e) order that the tenancy be terminated;

(f) make any other order that it considers appropriate. 2006, c. 17, s. 31 (1).

62 Section 31(3) of the *RTA* gives the Board certain powers once it determines that the rental unit is "vacant":

(3) If the Board determines, in an application under paragraph 5 of subsection 29 (1), that the landlord, superintendent or agent of the landlord has altered the locking system on a door giving entry to the rental unit or the residential complex, or caused the locking system to be altered, during the tenant's occupancy of the rental unit without giving the tenant replacement keys, and if the Board is satisfied that the rental unit is vacant, the Board may, in addition to the remedies set out in subsections (1) and (2), order that the landlord allow the tenant to recover possession of the rental unit and that the landlord refrain from renting the unit to anyone else. 2006, c. 17, s. 31 (3).

63 The Landlords submit that the Member's interpretation of the term "vacant" is not consistent with the typical

meaning ascribed to that word, that is "being empty" or some derivative of that notion. Because the Landlords had moved back into the premises, the Member could not have found the premises to be "vacant".

64 The Landlords further submit that punitive remedies short of recovered possession are available to the Board in situations where a landlord illegally terminates a tenancy and takes possession of a rental unit. As such, the Landlord's suggested interpretation would not leave the Board without the ability to impose a deterrent upon nefarious landlords.

65 I disagree with this submission.

66 First, the term "vacant" must be "read in [its] entire context, in [its] grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament". As noted above, one of the purposes of the *RTA* is to "to provide protection for residential tenants from unlawful rent increases and unlawful evictions". To read "vacant" in a literal or absolute sense, as was submitted by the Landlords, would permit landlords to profit from illegally evicting tenants. Indeed, one can easily imagine a situation where, in a tight rental market, a landlord could illegally end a tenancy and then move into the unit. The tenant in this example could be rendered homeless as a result of the landlord's illegal actions and the Board would have no ability to give possession of the rental unit back to the blameless tenant. This result runs contrary to the purposes of the *RTA* which include protecting tenants from unlawful convictions. The Landlords' suggested interpretation of the term "vacant" in s. 31(3) of the *RTA* cannot, therefore, be accepted. Rather, the term "vacant" must exclude situations where a landlord moves into a rental unit after having illegally terminated an otherwise legal tenancy. The Member was correct in making this finding.

67 As for the ACTO's submission that "vacant" ought to be interpreted so as to exclude situations where a landlord illegally terminates a tenancy and then rents the premises to a third party, I decline to deal with this issue as it does not arise on the facts before us.

68 This ground of appeal is therefore dismissed.

CONCLUSION

69 The Member committed no error in reaching his decision and, as such, the instant appeal is dismissed.

COSTS

70 By agreement of the parties, the Landlords shall pay the Tenants $9,000 (inclusive of HST) for the costs associated with this appeal. This sum shall be paid within 60 days of the release of these reasons.

71 Neither the Board nor the ACTO shall pay nor receive costs in this matter.

H.E. SACHS J.
M.N. VARPIO J.
S. O'BRIEN J.

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1 The Landlords argued that they had three points on this appeal but in reality, they have four points because points one and two are alternative arguments regarding jurisdictional issues.

End of Document

Crete v. Ottawa Community Housing Corp.

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

G. Huscroft, S.A. Coroza and P.J. Monahan JJ.A.

Heard: May 30, 2024.

Judgment: June 11, 2024.

Docket: COA-23-CV-1209

[2024] O.J. No. 2639 | 2024 ONCA 459

Between Daniel Crete and Marguerite Crete*, Plaintiffs (Appellant*), and Ottawa Community Housing Corporation/La Société De Logement Communautaire d'Ottawa* and John Doe, Defendants (Respondent*) And between Ottawa Community Housing Corporation/La Société De Logement Communautaire d'Ottawa, Plaintiff by Counterclaim (Respondent), and Marguerite Crete, Defendant to the Counterclaim (Appellant)

(32 paras.)

Counsel

Victoria L. Boddy, for the appellant.

Jay Skukowski, Ned Bozalo and Tyler Macks, for the respondent.

REASONS FOR DECISION

The following judgment was delivered by

THE COURT

1 The appellant, Marguerite Crete, along with her son, Daniel Crete, (collectively, "the Cretes") sued the respondent, Ottawa Community Housing Corporation, for injuries suffered by Daniel when he slipped and fell on ice on the front step of a townhouse the Cretes had leased from the respondent (the "Rented Premises").

2 The respondent denied liability for any injuries that Daniel may have suffered, relying in part on a provision in the lease (the "Snow Removal Provision") that assigned responsibility to the Cretes for clearing snow from their front steps to the main walkways in the residential complex. The respondent also counterclaimed against the appellant for contribution and indemnity for any amount it was ordered to pay the Cretes, on the basis that the appellant was responsible for snow clearing on the front step as a signatory to the lease and an occupier of the Rented Premises.

3 The appellant brought a motion for summary judgment seeking dismissal of the respondent's counterclaim, while the respondent brought a cross-motion seeking a variety of forms of relief, including dismissal of the Cretes' action, summary judgment on the counterclaim, and a declaration that the Cretes were responsible for winter maintenance of the Property.

4 The motion judge found that the Snow Removal Provision in the lease was not inconsistent with the *Residential Tenancies Act*, *2006*, S.O. 2006, c. 17 and regulations (the "*RTA*"). Therefore, the Snow Removal Provision was not void pursuant to s. 4 of the *RTA*, and its effect was to make the Cretes responsible for winter maintenance in the area where Daniel fell. The motion judge's order made a declaration to that effect, but dismissed all other relief sought by the parties on their summary judgment motions.

5 On appeal, the appellant argues that the motion judge erred in finding that the Snow Removal Provision was not inconsistent with the *RTA*. She maintains that the Provision is void, in accordance with s. 4(1) of the *RTA*, and that the respondent is responsible for snow clearing in the area where Daniel fell.

6 The respondent argues that the trial judge's order is interlocutory and not final, and the appeal should therefore be quashed as outside the jurisdiction of this court. Alternatively, the respondent argues that the motion judge did not err in her interpretation of the Snow Removal Provision, in her finding that the Provision was not inconsistent with the *RTA*, and in her declaration that the Cretes are responsible for snow clearing in the area where Daniel Crete fell.

7 As set out below, the motion judge's declaration was final rather than interlocutory and is appealable to this court.

8 Turning to merits of the appeal, although the motion judge erred in her interpretation of certain provisions of the *RTA*, she nevertheless correctly found that there is no inconsistency between the Snow Removal Provision and the *RTA*. The motion judge's further finding that the Snow Removal Provision in the lease makes the appellant responsible for clearing snow and ice from the area where Daniel fell is entitled to deference. We therefore dismiss the appeal.

The Motion Judge's Decision

9 The Snow Removal Provision provided in relevant part that "the Tenant is responsible for snow removal from the front and back doors of the Rented Premises to the main walkways". The motion judge found that this required the Cretes to clear snow and ice from their front steps and along a walkway leading to the street, areas which the motion judge found were used exclusively by the Cretes, as opposed to other tenants in the complex.

10 The motion judge then considered whether the Snow Removal Provision was void by virtue of s. 4(1) of the *RTA*, which provides that "a provision in a tenancy agreement that is inconsistent with this Act or the regulations is void."

11 The motion judge found no inconsistency between the Snow Removal Provision and O. Reg. 517/06, enacted under the *RTA* (the "Maintenance Standards Regulation" or the "Regulation").[1] Section 26(1) of the Regulation requires a landlord to maintain "exterior common areas" free of unsafe accumulations of ice and snow. Since the Snow Removal Provision merely required the Cretes to clear snow and ice from areas used exclusively by them, rather than "exterior common areas", there was no inconsistency between the Snow Removal Provision and s. 26(1) of the Maintenance Standards Regulation.

12 Nor, in the motion judge's view, was the Snow Removal Provision inconsistent with s. 20(1) of the *RTA*, which provides that a landlord is responsible for maintaining a residential complex "in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards." The trial judge interpreted the requirement in s. 20(1) to keep a property in "good repair" as not including the removal of accumulations of snow and ice, which typically do not cause damage that needs to be repaired. The motion judge found, instead, that s. 33 of the *RTA*, which makes tenants generally responsible for "ordinary cleanliness of the rental unit," requires tenants to clear snow and ice from areas used exclusively by them.

13 Given that there was no inconsistency between the Snow Removal Provision and the *RTA*, and that this

Provision required the Cretes to clear snow and ice from areas used exclusively by them, including the front steps of the Rented Premises, the motion judge declared that the Cretes were responsible for clearing snow and ice in the area where Daniel fell.

Jurisdiction

14 The Respondent argues that the motion judge's order is interlocutory rather than final and that appeal lies only to the Divisional Court with leave, since it does not finally dispose of the claim or counterclaim, or of the parties' substantive rights.

15 It is well established that an interlocutory order is one which does not determine the real matter in dispute between the parties, or any substantive right to relief of a plaintiff or a substantive defence of a defendant: *Drywall Acoustic Lathing Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc.,* 2020 ONCA 375, at paras. 16-17; *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, at para. 16, leave to appeal refused, [2021] S.C.C.A. No. 373.

16 Here, the motion judge's order does finally dispose of one of the appellant's defences to the counterclaim, by declaring that the Cretes, rather than the respondent, are responsible for clearing snow and ice from the area where Daniel fell.

17 The respondent argues that the motion judge's order would not be binding on the trial judge in this case (and thus was not a final order), since the motion judge did not invoke the power in r. 20.04(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to issue judgment where "the only genuine issue is a question of law." However, the cases relied upon by respondent, particularly *Ashak v. Ontario (Family Responsibility Office),* 2013 ONCA 375, 115 O.R. (3d) 401, were ones in which the formal order merely dismissed a motion for summary judgment without deciding any issue of law. In contrast, the motion judge's order in this case did expressly decide a legal issue by declaring that the Cretes were responsible for the clearing of snow and ice from the front steps of the Rented Premises. The order thereby dismissed one of the appellant's defences to the counterclaim, with binding effect on the trial judge.

18 To that extent, the trial judge's order is a final order and is appealable to this court, in accordance with s. 6(1)(b) of the *Courts of Justice Act, R.S.O 1990, c. C.43*.

Analysis

19 As described above, the motion judge found that s. 20(1) of the *RTA* requires a landlord to keep a property "in a good state of repair" and that this obligation did not include the removal of accumulations of snow and ice, since such conditions do not generally cause damage that needs to be repaired. Rather, she found that tenants were responsible for clearing snow and ice from areas used exclusively by them pursuant to s. 33 of the *RTA*, which makes tenants responsible for the ordinary cleanliness of a rental unit.

20 The motion judge's interpretation of the *RTA* involves questions of law, which are reviewed on a standard of correctness: *Housen v. Nikolaisen,* 2002 SCC 33, [2002] 2 S.C.R. 262, at paras. 8-9.

21 Respectfully, the motion judge adopted an unduly narrow interpretation of the scope of s. 20(1) of the *RTA* by focusing on the landlord's obligation in that subsection to maintain a residential complex in a "good state of repair". The motion judge failed to take account of the fact that s. 20(1) also requires landlords to comply with "health, safety, housing and maintenance standards". The applicable maintenance standards are set out in the Maintenance Standards Regulation, which deals expressly, at. s. 26(1), with a landlord's obligation to clear snow and ice in a residential complex. It follows that s. 20(1) of the *RTA* does encompass a landlord's responsibility to clear snow and ice in a residential complex, albeit in accordance with the applicable standards set by the Regulation. The corollary is that the responsibility to clear snow and ice is not encompassed within the tenant's obligation for "ordinary cleanliness of the rental unit" under s. 33 of the *RTA*.

22 While the motion judge erred in her interpretation of ss. 20(1) and 33 of the *RTA*, she correctly found that s. 26(1) the Maintenance Standards Regulation only requires a landlord to clear snow from exterior common areas in a residential complex, and not areas used exclusively by individual tenants.

23 The appellant argues that the motion judge failed to take account of the fact that the Maintenance Standards Regulation defines "exterior common areas" as including "grounds for the use of tenants". On this basis, the appellant argues that the landlord is required to clear snow and ice from all exterior areas in the complex, not just areas used by tenants in common.

24 The difficulty with the appellant's argument is that it effectively reads out the word "common" from the definition of "exterior common areas". The motion judge correctly found that "grounds for the use of tenants" in the definition of "exterior common areas", must be grounds intended to be used by tenants in common, as opposed to lands or areas reserved for the exclusive use of individual tenants.

25 The appellant further argues that the motion judge's interpretation of the landlord's responsibility to clear snow and ice in s. 26(1) of the Maintenance Standards Regulation is inconsistent with this court's decision in *Montgomery v. Van*, 2009 ONCA 808.

26 We do not agree.

27 In *Montgomery*, the court found that a lease provision which required a tenant to clear snow from a common area in a residential complex was inconsistent with the landlord's responsibility under the applicable maintenance regulation to clear snow from "exterior common areas". The lease provision was therefore found to be void. But in coming to that conclusion, the court made clear that the landlord's responsibility for snow clearing only extended to common areas in the residential complex: *Montgomery*, at para. 9. Thus nothing in *Montgomery* requires a landlord to clear snow from areas used exclusively by individual tenants.

28 In this case, the motion judge interpreted the Snow Removal Provision as requiring the Cretes to clear snow and ice only from areas reserved for their exclusive use. This was a finding of mixed fact and law, reviewable on a standard of palpable and overriding error. There was an extensive evidentiary record supporting the motion judge's interpretation of the Snow Removal Provision, including an affidavit from the appellant and photographs of the Rented Premises. The appellant has not identified any basis upon which we could interfere with the motion judge's conclusion that the Snow Removal Provision required the Cretes to clear snow and ice only from areas used exclusively by them, and not from any areas used by tenants in common.

29 We therefore conclude that the motion did not err in finding that the Snow Removal Provision was not inconsistent with the respondent's responsibility under s. 26(1) of the Maintenance Standards Regulation to clear snow and ice from "exterior common areas" in the complex.

30 The appellant argues, in the alternative, that the Snow Removal Provision is inconsistent with ss. 7 or 28 of the Maintenance Standards Regulation. Neither of these provisions is applicable in the circumstances of this case. Section 7(2) deals with clearing of snow and ice from roofs, which is not at issue. Section 28 requires that driveways and other areas "shall be maintained to provide a safe surface for normal use". However, given that s. 26(1) expressly deals with the landlord's obligations to clear unsafe accumulations of ice and snow, s. 28 does not encompass responsibility for snow clearing.

Disposition

31 The motion judge did not err in her finding that the Snow Removal Provision required the Cretes to clear snow and ice from areas used exclusively by them, which included the area where Daniel fell, and that the Provision was not inconsistent with the *RTA*. The appellant's appeal is therefore dismissed.

32 In accordance with the agreement of the parties, the appellant shall pay the respondent's costs of the appeal in the amount of $15,000, all inclusive.

G. HUSCROFT J.A.
S.A. COROZA J.A.
P.J. MONAHAN J.A.

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1 The parties assumed, without analysis, that the Maintenance Standards Regulation applies to the residential complex where the Rented Premises are located. We agree that this is the case, by virtue of the fact that the local municipality (the City of Ottawa) has not enacted a municipal by-law applicable "only to the exterior of residential complexes", per s. 4 of the Maintenance Standards Regulation. While the city has enacted a by-law dealing in general terms with property maintenance in the municipality (By-law No. 2005-208), this by-law does not prescribe standards for the maintenance of the exterior of residential complexes, and thus does not oust the application of the Maintenance Standards Regulation to the residential complex in this case.

End of Document

Order under Section 30 and 31
Residential Tenancies Act, 2006

File Number: EAT-92159-20, EAT-92160-20, EAT-92176-20

In the matter of: 12 MELVA AVENUE
GLOUCESTER ON K1T3W9

Between: Veronique Perreault — Tenant

and

C/o Sentinel Management Inc. — Landlords
Cindy Johnston, Property Manager Sentinel Management Inc
Martin And Roxanne Johnston

In the application EAT-92159-20, Veronique Perreault (the 'Tenant') applied for an order determining that Martin And Roxanne Johnston, Cindy Johnston, Property Manager Sentinel Management Inc and C/o Sentinel Management Inc. (the 'Landlords') failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

In the application EAT-92160-20, Veronique Perreault (the 'Tenant') applied for an order determining that Martin And Roxanne Johnston, Cindy Johnston, Property Manager Sentinel Management Inc and C/o Sentinel Management Inc. (the 'Landlords') failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

In the application EAT-92176-20, Veronique Perreault (the 'Tenant') applied for an order determining that Martin And Roxanne Johnston, Cindy Johnston, Property Manager Sentinel Management Inc and C/o Sentinel Management Inc. (the 'Landlords') harassed, obstructed, coerced, threatened or interfered with them and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.

The three applications were heard together by videoconference on November 24, 2021 at 9:27 AM.

The Tenant Veronique Perreault, and the Landlords' agents, Jeanette Caton and Melissa Macdonald, and the Landlords' representative, Rolland Hedges, attended the hearing.

Determinations:

1. The Tenant has brought three applications. Two are T6 (maintenance) applications, one relating to the period in which a stove was being replaced, the other alleging that the Landlords' have improperly delegated their statutory maintenance obligations to her. The third is a T2 (Tenants Right) application relating to fireplaces in the rental unit.

2. For the reasons that follow, all three applications are dismissed.

EAT-92159-20

3. A T6 Application concerns the Landlord's obligations under Section 20 of the Act, which states as follows:

> 20. (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
>
> (2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.

4. The Tenant's application alleges that the stovetop and oven in the rental unit became non-functional on February 13, 2020. It was inspected by a repair person on February 19, 2020, and a decision taken by the Landlord to replace the stove on February 24, 2020. The new stove was ordered, installed on March 3, 2020. These events and dates are not contested by the Landlord.

5. The Tenant claims that the replacement of the stove could have been accomplished quicker had the Landlord sourced a used appliance, and that is consequence the Tenant was without a means of cooking meals for 21 days other than a microwave. The Tenant claims that she incurred $469.85 in take-away and microwaveable food expenses during this repair period when she was unable to use the stove for cooking. She attributes these costs to the Landlord having failed to meet the obligations in section 20 of the Act.

6. The Tenant has provided bank statements showing her food expenditure during the period the stove was non-functional, but as I noted at the hearing, she has provided no base-line of comparable expenses in a similar period when the stove was functional, either before or after the period in which it was out of service. Even were there a finding that the Landlord had failed to meet maintenance obligations, all the Tenant has shown is the amount she spent on food when the stove was awaiting replacement. Any difference from a typical baseline (which I would consider to be the quantification of damages) is therefore speculative.

7. In addition, section 16 of the Act requires that an injured party take reasonable steps to mitigate their losses:

> When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, **the person entitled to claim the amount has a**

> **duty to take reasonable steps to minimize the person's losses**. [Emphasis added]

8. The onus is on the Tenant to demonstrate that she took reasonable steps to mitigate the Landlords' damages Given the amount claimed for food, I have to ask why the Tenant did not mitigate her losses from the loss of stove-top burners by purchasing an electronic burner-style hot plate that might cost between $30 and $50 from a local hardware store. Her position was that she ought not to incur expenses of temporary replacement appliances when the Landlords might be in breach of their maintenance obligations. This position flies in the face of the principle of mitigation – a reasonable and inexpensive means of mitigating losses was available to the Tenant. If the Landlords were in breach of their maintenance obligations, incurring such an expense in the course of mitigating damage could be validly brought before this Board. Instead, the Tenant has incurred over $450 in what she claims to be excess food bills. Her first incurred food expenditure that she attributes to the broken stove was on February 19, 2020. Between February 19 and 21, 2020, the Tenant incurred $170.30 in expenses that she claimed in this application – well above the cost of alternate mitigation noted above. She has failed to demonstrate that she attempted to mitigate her losses.

9. As the Tenant has proven neither damages, nor mitigation, her application is moot. I therefore make no express determination on the Landlord's compliance with maintenance obligations, although I do consider the Landlord's response to the stove's failure was reasonable in the circumstances.

EAT-92160-20

10. The Tenant objects to the requirement under her tenancy agreement that she be responsible for lawn care and snow removal. The rental unit also contains a pool, and the Tenant objects to the Landlord not covering the cost of its operational maintenance of the pool

11. The Tenant argues that these are maintenance obligations of the Landlord, and specifically pleads the decision of the Ontario Court of Appeal in *Montgomery v. Van*, 2009 ONCA 808 ("*Montgomery*"), which she typifies as requiring that the landlords are responsible for services of this sort unless there is a severable contract from the lease where the landlord has contracted the tenant to perform such work.

12. The Tenant seeks a rent abatement in the amount of $2,456.07 for her out-of-pocket expenses for these maintenance items.

13. *Montgomery* does speak to the proposition that a landlord cannot in a lease agreement delegate its statutory and regulatory maintenance obligations to a tenant. Should the landlord wish to have the Tenant perform maintenance obligations for them, such an arrangement must be in a severable contract. In the case of *Montgomery*, the lease delegated to a tenant the obligation to remove snow. It does not however hold that snow removal is always a maintenance obligation of the landlord. The key issue is whether a landlord has delegated its compulsory maintenance obligations to a tenant.

14. The regulatory authority that informed *Montgomery* is a regulation made under the Act: O. Reg. 517/06. In accordance with section 224(1) of the Act, this regulation sets out maintenance standards that apply in parts of the province that lack municipal housing and maintenance standards. Subsection 26(1) of O. Reg. 517/06 was material to the decision in *Montgomery*:

> 26. (1) Exterior common areas shall be maintained in a condition suitable for their intended use and free of hazards and, for these purposes, the following shall be removed:
> 1. Noxious weeds as defined in the regulations to the Weed Control Act.
> 2. Dead, decayed or damaged trees or parts of such trees that create an unsafe condition.
> 3. Rubbish or debris, including abandoned motor vehicles.
> 4. Structures that create an unsafe condition.
> 5. Unsafe accumulations of ice and snow.

15. This regulation may impose an obligation on the Landlord to maintain exterior common areas, including removing dangerous snow and ice from them. This is material to distinguish the current application from *Montgomery*, as in *Montgomery* the tenant was one of many in a multi-unit complex, whereas the Tenant in this application resides in a detached house as the sole tenant. The tenancy agreement gives her exclusive possession of the entire property, including the walkways and the pool. Subsection 26(1) of O. Reg 517/06 imposes these obligations on a Landlord for "exterior common areas" only. As there are no exterior common areas, only areas of exclusive possession, subsection 26(1) could not be engaged. *Montgomery* simply cannot be taken as an authority that the Landlord cannot delegate lawn or snow removal responsibilities in the lease for a standalone house that is rented in its entirety under a single tenancy agreement.

16. Were there to be such a maintenance obligation imposed upon the Landlords for an exclusive-use area, the operation of other provisions of the Act would require that the Landlords give 24-hour notices every time any entry for lawn care or snow removal. For snow removal in particular, such a requirement would result in a patent absurdity.

17. The removal of snow and general lawn maintenance of an exclusive-use area are in my view ordinary cleanliness obligations, which are the Tenant's responsibility under section 33 of the Act. Therefore, while *Montgomery* is separately rejected as an authority in this application, my core finding is that the lawn maintenance and snow removal on exclusive-use areas fall under the Tenant's obligations under section 33 of the Act, not the Landlord's obligations under section 20. The delegation of these responsibilities to the Tenant in the lease is not improper.

18. The pool raises a separate issue, as it is not spoken to in the tenancy agreement. The amounts claimed by the Tenant relate solely to operational maintenance, and the invoices provided by the Tenant show that the expenses claimed relate only to the analysis of pool water and the purchase of chemicals for the pool. I conclude based upon the evidence introduced by the Tenant that the costs claimed relate to operation, not maintenance of the pool, and do not fall within any obligations of the Landlords under

section 20(1) of the Act. The expenses claimed do not relate to fitness for habitation or state of good repair, and are more analogous to ordinary cleanliness obligations, which are the Tenant's responsibility under section 33 of the Act. I make no express determinations as to the Landlord's other responsibility in relation to the pool.

19. I therefore find no breach of the Landlord's maintenance obligations under the Act.

EAT-92176-20

20. The Tenants' T2 application alleges that Landlords substantially interfered with her reasonable enjoyment of the rental unit by not having the use of a wood fireplace since the start of the tenancy, and not being told how to use a separate gas fireplace at the beginning of the tenancy. She seeks a 5% rent abatement, and an order that the wood fireplace be put into working order.

21. The pertinent section of the Act that inform the Tenants' claims on this application is section 22:

> 22. A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

22. I note that, while the subject matter of the complaint touches on issues that might by typified as maintenance, the application selected by the Tenant alleges only substantial interference with her reasonable enjoyment of the rental unit. Therefore, the only allegation before the Board is that the state of the fireplace substantially interfered with the Tenant's reasonable enjoyment of the rental unit.

23. The wood fireplace is located in the living room. The Tenant's position is that she saw the wood fireplace in the living room, assumed it was operational, but did not actively verify this state. At around the time of signing the lease, she was dismayed to learn from the Landlords that the wood-burning fireplace is not operational, and that she cannot burn wood in the rental unit. She feels that this has lessened her enjoyment of the room as she wishes to use it for nightly fires with her children.

24. I find that any interference was not a substantial interference with the Tenant's reasonable enjoyment of the rental unit. The lack of amenity complained of is minimal, and the importance the Tenant attaches to the fireplace at this time is in my view undermined by her initial conduct that saw no need to take even basic steps to verify that it was not effectively decorative. Where a fireplace is not the primary heat source of a rental unit and it serves only a decorative or atmospheric purpose (whether used or not), I do not believe that its operability can reasonably be assumed. The Tenant has not argued misrepresentation, but merely false assumption on her part.

25. There is also a gas fireplace in the basement. The Tenant's testimony was that she discovered in August 2020 that the gas fireplace was not working when she first tried to

use it. Within about a week she was advised how to open the gas main that would permit it to be used. I find that, in relation to the gas fireplace, the Tenant has not shown substantial interference with her reasonable enjoyment of the rental unit. Given the short duration of the inability of the Tenant to use the gas fireplace, and the speed with which the Landlords told her how to use it, there was no substantial interference with her reasonable enjoyment of the rental unit.

It is ordered that:

1. The Tenant's applications are dismissed.

December 14, 2021
Date Issued

Ian Speers
Vice Chair, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.