

# 2016 ONPHA Conference and Trade Show

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## An Introduction to the Landlord and Tenant Board

**PRESENTED BY:** Laura Clark, Lawyer  
Ottawa Community Housing Corporation

**ONPHA**



## Objectives

- Legislative overview
- Tenant Applications
- Basic steps to resolve issues
- Notices
- Landlord Applications
- Hearing
- Board Order



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## Legislative Overview

- *Residential Tenancies Act*
- Regulations
  - O. Reg. 516/06 – Matters relating to rent
  - O. Reg. – 517/06 – Maintenance standards
  - O. Reg. - 394/10 – Suite Meters
- Landlord and Tenant Board
  - <http://www.sjto.gov.on.ca/lrb/rules-practice-directions-guidelines/>
  - Rules of Practice
  - Interpretation Guidelines



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## *Human Rights Code*

- Disability includes addictions
  - Trafficking is a business, addiction is a disability
- You have to attempt to accommodate tenant to point of undue hardship, taking into consideration cost, health and safety requirements
- Tenant has to participate in accommodation process
- LTB has an obligation to examine *Human Rights Code* and is governed by it



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## Landlord & Tenant Board

- Adjudicates disputes between residential landlords and tenants
- Monetary jurisdiction up to \$25,000
- Provides alternate dispute resolution services
- Can make binding orders:
  - terminating tenancies
  - payment of damages
  - abatements of rent
  - compelling landlord to do repairs or maintenance



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## Tenant Applications

- Landlord not doing maintenance
- Landlord has illegally entered unit
- Landlord has illegally changed locks without giving replacement keys
- Landlord has substantially interfered with reasonable enjoyment of property
- Landlord has harassed, threatened or coerced tenant

**Tenant has one year to raise these claims at LTB**



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## Basic Steps

Action	Purpose
In-House Efforts	Work with tenant, make attempts at accommodation if appropriate, or draft a payment plan if it's about rent
Determine Notice	Analyze conduct and determine type of termination notice to use. Review facts, getting <u>names, dates and times</u>
Draft Notice	Be specific, lots of details with dates/times
Serve Notice	Watch out for timing issues, # of days from service to termination



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## Basic Steps

<u>Action</u>	Purpose
File Application & Schedule Hearing	Filing your application (with applicable notices attached) gets you into system. Cost is \$170.00
Gather Facts	Figure out who, what, when, where and why. Have team meeting to double-check your facts
Assemble Docs	Based on facts you believe to be true, put together documents that support your position; pictures, letters, case notes, security reports, security videos, invoices



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## Voidable Notices

- N4 – Non Payment of Rent: Void if tenant pays rent before Landlord applies to Board
- N5 – Damage/Interference/Overcrowding: Void if, within 7 days, tenant corrects issues in notice



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## Non-Voidable Notices

- N6 - Illegal Act & Misrepresentation of Income
- N7 - Impairment of Safety/Wilful Damage
- N8 - End of Term
- N9 - Tenant's Notice to Terminate Tenancy
- N11 - Agreement to Terminate Tenancy



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## Non-Voidable Notices

- N12 - Terminate at End of Term for Landlord/Purchaser Own Use
- N13 - Notice to Terminate at End of Term for Demolition, Conversion



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## N15 – 28 Day Notice to Terminate

- New notice for tenants who fear for safety or children's safety
- Not voidable if tenant is ending entire tenancy (only one tenant)
- If it is joint tenancy, and person giving notice changes his or her mind, tenancy continues



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## Form of Notice

- Check termination date
  - Termination date for N4 = 14 days after tenant is served
  - Serving multiple termination notices
    - Use same termination date (longest)
    - Not possible, file application separately
- Double-check you correctly identify address of rental unit
- Make sure that you have facts!
  - What happened?
  - When did it happened? - dates and times



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## Rent Arrears

- Only rent arrears \$\$
- Check termination date carefully
  - must be at least 14 days after date tenant is served
- For tenants who are historically late
  - serve N4 with N8 notice for persistent late payment of rent



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## Serving Notices

- Handing it to person
- If it is tenant, handing it to apparently adult person in rental unit
- Sending it by mail to last known address where person resides or carries on business
- by placing it under door of rental unit
- By courier to person
- By fax;

*If you serve by mail, notice is considered delivered 5 days afterwards*



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## “Pay and Stay” Provisions

- Tenant can remain in unit if they pay arrears plus any new rent before:
  - Termination date in N4
  - Before hearing, so long as they also pay \$170 application fee
  - After hearing but before you file with Sheriff, including \$170 and new rent



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## Notice of Termination Based on Conduct

LTB Form #	Notice to be used for:
N5	Early termination for wilful or negligent damage to the rental unit, interference with the reasonable enjoyment of other tenants or the landlord or interference with the landlord's lawful right or interest.  Number of people living in the rental unit is more than permitted by health, safety or housing standards



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N6	<p>Early termination for an illegal act or illegal business at the residential complex, special provisions for drug production.</p> <p>Early termination for mis-representation of income.</p>



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N6	<p>Early termination for an illegal act or illegal business at the residential complex, special provisions for drug production.</p> <p>Early termination for mis-representation of income.</p>
N7	<p>Early termination for impaired safety, or for causing wilful damage. Also for use of the rental unit in a manner inconsistent with its normal use.</p>



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N6	Early termination for an illegal act or illegal business at the residential complex, special provisions for drug production.  Early termination for mis-representation of income.
N7	Early termination for impaired safety, or for causing wilful & undue damage. Also for use of the rental unit in a manner inconsistent with its normal use.
N8	Termination at the end of the term for persistent late payment of rent. Also for no longer qualifying to live in public or subsidized housing



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## The N5

- N5: Notice to terminate tenant, occupant or a person permitted into building:
  - “substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.”
- Wilfully or Negligently damages building
- Number of persons occupying rental unit on continuing basis results in contravention of health, safety or housing standards required by law



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## N5 – Damage & Interference

Details are key:

- What happened - conduct or damage
- When it happened - dates and times
- Where – make sure it was within building
- How – did damage occur
- Who did it – tenant, occupant, guest

*If it is not in N5 notice, Board won't hear it!*



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## N5 – Claims for Damage

- It's best to get proper quotes and estimate carefully before serving tenant with N5 for damage. Include all your costs!
- Damage must be willful or negligent; done by tenant, occupant, or person permitted in building
- You need evidence to prove any damage claim. Pictures, videos, invoices, contractor testimony, staff testimony etc.



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## N5 – Damage & Interference with Enjoyment

Voidable Notice:

- If tenant complies with notice within 7 days of deemed service, N5 is void
- You can still serve second N5 if tenant messes up any time within 6 months following date on which first N5 notice was served

*If tenant can't figure out how to void N5, it's over!*



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## N5 – Was notice voided?

- Noise/Disturbances
  - You have no complaints
  - Complainants tell you issues have stopped
- Damage
  - Tenant has opportunity to repair or pay
  - Schedule inspection on 8<sup>th</sup> day to see if repairs complete
- Not allowing maintenance/pest treatments
  - Serve 24 hour notice for 7<sup>th</sup> day (within 7 days)



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## N6 & N7 – Illegal Acts & Impaired Safety

- Board will dismiss application without specifics, dates, times, etc.
- If appropriate, serve multiple notices - N5, N6 and N7
- If you fail to prove that illegal act occurred, you may still be able to prove:
  - it impaired safety
  - or that it interfered with enjoyment



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## N6 & N7 – Illegal Acts & Impaired Safety

- If serving multiple termination notices for conduct, you must ALWAYS use same termination date (20 days out at minimum) in all of notices.
- Tenants are usually responsible for actions of guests, but you must prove they permitted person entry into the unit or building



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## N6/N7 Illegal Acts/Impaired Safety what you have to prove

- Illegal act must be committed or permitted by tenant or an occupant
- If impairment of safety was by a guest you will have to prove that tenant permitted them into building
- You need to prove that act could potentially effect character or nature of building or other tenants



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## N6 – Misrepresentation of Income

- N6 notice is also used for termination based on misrepresentation of income
- You must prove that tenant “knowingly or materially” misrepresented their income.
- If “misrepresentation” was unintentional, or was simply delay in reporting
  - follow HSA notice requirements
  - Consider recalculating and using N4

*RGI rent is a scarce, valuable public commodity!*



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## Domestic Violence - New

- N15 – 28 Day Notice to Terminate Victims of Violence
- Accompanied by court order OR statement about sexual or domestic violence (LTB Form)
- If tenant is joint tenant, and other tenants have not signed notice, they can remain
- If tenant giving notice in joint tenancy does not vacate, notice becomes void
- If all legal tenants have signed notice, but you are not sure unit is vacated, you can file L3



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## Statement about domestic violence

Tenant's Statement About Sexual or Domestic Violence and Abuse	
To: (Landlord's Name)	From: (Tenant's Name)
Address of Rental Unit:	
<p>Reason for giving the notice to end my tenancy (Form N15): I or a child living with me has been a victim of domestic or sexual violence and/or abuse and we must move out of the rental unit. I believe we may be at risk of harm or injury if I continue to live here, based on one or both of the following reason(s):</p> <p><b>One of these people:</b></p> <ul style="list-style-type: none"><li>• my spouse or my former spouse</li><li>• someone I live with, or lived with in a conjugal relationship</li><li>• a person that I am dating or I used to date</li><li>• someone who lives in my unit that is related to me or the child by blood, marriage or adoption</li></ul> <p><b>has caused me or a child living with me:</b></p> <ul style="list-style-type: none"><li>• to suffer bodily harm or damage to our property by intentional or reckless behaviour or actions.</li><li>• to fear for our safety because of their behaviour and actions or threatened actions.</li><li>• to be held by force against our will.</li><li>• to fear for our safety because of a series of actions, including following, contacting, communicating with, watching, or monitoring us.</li></ul>	



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## Domestic Violence – Cont'd

- In joint tenancy remaining tenant(s) have right to terminate on 60 days notice
  - If unit is RGI you would adjust rent
  - If unit is market remaining tenant(s) become responsible for entire rent (If there is rent deposit it goes to benefit of remaining tenant(s))
- You must keep notice confidential
  - After date of termination AND tenant has vacated you can tell a remaining joint tenant that notice was given and date of termination
  - You can advertise if you don't identify unit



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## Case study - Damage

- What form(s)?
  - Depends on evidence
  - N5 for damage
  - Possibly N7 willful damage or N6 illegal act
- What details do you need?
  - When damage discovered
  - Costs – written estimate, invoice
- Termination date?
  - 20 calendar days after serving tenant
- Is notice voidable?
  - N5 is voidable if paid or repaired within 7 days
  - N7/N6 are not voidable



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## Landlord Applications



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## Filing an application at LTB

- In person
  - LTB office
  - some Service Ontario locations
- By fax
- Online - <http://www.sjto.gov.on.ca/ltb/e-file/>



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## Notice of Hearing

- Landlord & Tenant Board now serves all Notices of Hearings by mail
- ONPHA recommends:
  - Also serve Notice of Hearing package on tenant
  - Complete Certificate of Service
  - keep on file and bring to hearing



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## L1 or L9 – based on N4 Rent Arrears

- L9 will give you order for payment only, not eviction
- L1 Application for Termination of Tenancy and payment of arrears:
  - You can still mediate payment arrangement
  - If tenant does not obey mediated settlement Board will issue order terminating tenancy and for payment of money owing
  - Can be filed at any time – N4 does not “expire” until balance = \$0



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## Payment Agreements

- Allows enforceable settlement:
  - After L1/L9 filed
  - Must be signed by both parties
  - Submit agreement to LTB before hearing
- LTB will issue Order based on terms of agreement
- If tenant breaches order, you may file “Request to Re-Open”



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## Rent Arrears Applications

- Section 82: tenant can raise any issue that could be subject of tenant application
- Review file and history of complaints prior to hearing
- Consider maintenance inspection week before hearing so you are prepared.
- Possibly: ask for order that tenant provide details and an adjournment



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## Void After Sheriff Filing

Two possibilities:

- Request for review
- Motion to void eviction order (74)
  - Pay to landlord or LTB and file affidavit
  - Board will “cancel” eviction and schedule hearing
  - Tenant can only use this special voiding process once during life of tenancy



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## Void After Sheriff Filing

- Tenant files motion, pays money owing into Board, and files affidavit swearing everything is paid
- Board temporarily stays order and schedules hearing
- If tenant has paid all arrears, NSF charges, application fee (if previously ordered by Board) and Sheriff fee (if paid by landlord), Board will declare eviction order void



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## Filing the L2 Application and Schedule Hearing

- If you served first N5, you must wait until 7 days have passed before you can file L2 Application
- If you have served second N5, an N6, N7, or N8, you can file L2 as soon as notices are served
- Board will schedule a hearing. Let them know if you have dates that you are NOT available.
- The Board will mail notice of hearing to parties



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## Illegal Assignment or Sublet

- Legal tenant moves out of unit and leaves it to another person
- Legal tenant moves out of unit for a period of time and “sublets” it to another person
- Private landlords must:
  - Consent if it is reasonable
  - File application within 60 days of discovery
  - These rules do NOT apply to social housing!
- File A2 application to terminate tenancy and evict illegal occupant



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## Before Hearing

- Prepare Request for Summons, if needed
  - police, agencies, by-law officer require summons
- Make copies of all documents you intend to submit and rely on:
  - One for you
  - Adjudicator
  - Other side (and possibly, one for witness)
- Write out questions that you will ask witnesses
- Think about tenant's possible defence - be prepared



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## Mediate or Hearing?

- Try to honestly appraise your case and tenant's case
- Are there reasons why adjudicator could deny or delay an eviction?
- Ask yourself if you or LTB may have obligation to accommodate tenant's disability (for example, tenant has now obtained treatment for addiction)

*If you think conditional order is likely, you may want to mediate*



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## Mediation and Conditional Orders

- *Residential Tenancies Act, 2006*
  - Section 194 - Mediation
  - Section 78 – Application
    - previous order
    - mediated settlement
  - Section 83 – Relief from eviction
- Landlord Tenant Board Rules of Practice
  - Rule of Practice 13
- *Ontario Human Rights Code*



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## The Hearing

- Rent arrears: Complete Information Update Form
- Burden of proof is on party that filed application
- Prepare in advance:
  - Bring witnesses
  - Documents
  - Photos



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## The Hearing

- Hearsay is allowed, but if there is direct evidence that contradicts it, Member must accept that evidence.
  - Hearsay = statement made out of court that is used in court to prove something is true
- *Ontario Evidence Act*: Proof that person was convicted of crime is proof that act was committed (unless an appeal filed)



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## Section 83 – Delay Or Deny

- Board is obligated to consider whether they should give discretionary relief
  - Was conduct by co-tenant or guest who is no longer there?
  - Tenant circumstances (children, health, mental capacity)
  - Impact of loss of subsidized housing
  - Seriousness of conduct
  - Rental history
  - Landlord's conduct
  - Would conditional order be effective or resolve issue



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## Board Order

- Board is REQUIRED to examine s. 83 and *Human Rights Code*
- Even if you prove your case, Board may allow tenant to remain with conditions
- If Board terminates, you may need to file Order with Sheriff
- If tenant appeals order – it is “stayed”



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## Board Order (cont'd)

- May be given orally at end of hearing usually issued to both parties after
  - Interim – matter is still ongoing
  - Final – closes application, legally binding
- Ask for written reasons
- Other orders
  - Ex parte
  - Review
  - Amended
  - Set aside



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## Case study - Damage

- What application to file?
  - L2
- Would you consider mediation?
  - Depends on circumstances
    - Offer time to move out
  - If case is weak



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## Case study - Damage

- Is there a possibility of discretionary relief?
  - Drug trafficking is a business
  - Addiction is a disability
- What might the Board order?
  - Eviction
  - Order with conditions
  - Dismissal



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## Resources

- Handouts available to conference delegates
  - Online after conference
- Landlord and Tenant Board <http://www.sjto.gov.on.ca/ltb/>  
current forms, applications and instructions
- Landlord self-help centre  
<http://www.landlordselfhelp.com/intro.htm>
- Case law  
<http://www.canlii.org>  
*Ontario Landlord and Tenant Law Practice*, Jack Fleming



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## How can ONPHA help you?

### 1. Visit ONPHA online:

[onpha.on.ca](http://onpha.on.ca)

- handbooks and guides
- sample policies
- Info Ons

### 3. ONPHA Education Program

- Online courses: RGI, RTA, Finance and Governance
- Webinars
- In-person training

### 2. ONPHA Member Support Hotline: 1-800-297-6660

### 4. ONPHA Conference

- Join us in 2017 in Niagara Falls, November 3 - 5



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# Thank you!

*ONPHA values your opinion. Please complete a workshop evaluation.*