



# 2017 ONPHA Conference and Trade Show

Shaping  
our  
Future

**302**

Making your case at the  
Landlord and Tenant  
Board

PRESENTED BY:

# Learning goals

By the end of the session, participants will be able to:

- Recall and apply best practices to respond to tenant LTB applications.



# Legislative framework

- *Residential Tenancies Act* (the "Act")
  - Section 29 allows tenant to file an application against the landlord
- Rules and Guidelines
  - Guideline 5 – Breach of maintenance obligations
  - Guideline 6 – Tenant's rights
  - Guideline 17 – Human Rights



# *The Human Rights Code*

- Every person has right to equal treatment with respect to services, goods, facilities, accommodation & employment
- Must accommodate tenants to point of undue hardship (considering the cost, outside sources of funding, and health and safety requirements)
- Harassment by landlord, agent or tenant is not permitted
- Breach of the Code may substantially interference with tenant's reasonable enjoyment



# Landlord's RTA obligations

- Providing and maintaining residential complex and rental units
  - Good state of repair
  - Fit for habitation
- Not to withhold vital services
- Not to substantially interfere with reasonable enjoyment of the rental unit or the residential complex
- Not to harass, obstruct, coerce, threaten or interfere with a tenant
- Not to alter/change locks
- Enter unit only in accordance with the Act



# So what does Section 29 say?

- Tenant or former tenant may apply to Board for an order determining that the landlord has breached its RTA obligations
- Applications made under Section 29
  - Time limit of one year



# Types of applications

LTB Form #	Application to be used for:
T1	<b>Tenant Application for a Rebate</b> Is filed when: <ul style="list-style-type: none"><li>• Landlord collected money that should not have been collected; or</li><li>• Landlord failed to pay the tenant money that was owed.</li></ul>
T2	<b>Application about Tenant Rights</b> Tenant wants the Board to determine: <ul style="list-style-type: none"><li>• Landlord entered rental unit illegally or changed locks without giving tenant replacement keys</li><li>• Landlord substantially interfered with tenant's reasonable enjoyment of rental unit or complex</li><li>• Landlord harassed, coerced, obstructed, threatened or interfered with the tenant</li><li>• Landlord withheld or interfered with vital services, care services or meals</li><li>• Landlord did not give tenant 72 hours to remove tenant's property from rental unit after tenant evicted by Sheriff</li><li>• Landlord did not give tenant written tenancy agreement with respect to care home unit, care services, meals and/or charges agreed to</li></ul>



# Types of applications (cont'd)

LTB Form #	Application to be used for:
T3	<b>Tenant Application for a Rent Reduction (most non-profit housing exempt)</b> Tenant believes that the rent should be reduced because: <ul style="list-style-type: none"><li>• reduced or discontinued service or facility that was previously provided to rental unit or to residential complex; or</li><li>• municipal taxes and charges for residential complex have been decreased</li></ul>
T4	<b>Tenant Application – Landlord did not comply with an Agreement to Increase Rent Above the Guideline (most non-profit housing exempt)</b> Tenant and the landlord signed an N10 Agreement (agreement to increase rent above the guideline) Tenant wants the portion of rent increase that was above the guideline returned because landlord failed to: <ul style="list-style-type: none"><li>• do major repairs or renovations to the rental unit</li><li>• buy new equipment for the rental unit, or</li><li>• add a new service to the tenancy</li></ul>





# Types of applications (cont'd)

LTB Form #	Application to be used for:
T5	<b>Tenant Application – Landlord Gave a Notice of Termination in Bad Faith</b> Tenant believes that landlord gave notice to terminate tenancy but was dishonest Applicable notices would be: <ul style="list-style-type: none"> <li>• N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit, or</li> <li>• N13 Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert it to Another Use</li> </ul>
T6	Tenant Application about Maintenance Tenant would like the Board to determine that the landlord: <ul style="list-style-type: none"> <li>• has not repaired or maintained the rental unit or the residential complex; and/or</li> <li>• has not complied with health, safety, housing or maintenance standards.</li> </ul>
T7	Tenant Application about Suite Meters Filed when landlord: <ul style="list-style-type: none"> <li>• improperly terminated their obligation to provide electricity to rental unit and required tenant to start paying electricity costs; or</li> <li>• required that tenant pay portion of utility costs for rental unit when improper to do so.</li> </ul>



# What could happen?

- Orders under Sections 30 & 31:
  - Terminate tenancy
  - Abatement of rent
  - Authorize repair or replacement or costs of same
  - Order landlord to pay specified sum
  - Prohibit landlord from charging new rent
  - Prohibit landlord from giving notice of rent increase
  - Any other order that is appropriate



# To avoid tenant application

- Know obligations under RTA
- Take all tenant complaints seriously and investigate accordingly
- Pair up with staff, where possible:
  - Conducting unit inspection
  - Meeting with tenant
  - Serving tenant with legal documents
- Be mindful of the *Human Rights Code*



# Unit inspections

- What seems to be harmless unit inspection could be subject of T2 application
  - All inspections should be conducted in accordance with the Act
  - Limit the window for entry to four hours per *Wrona v. TCHC*
  - Never rely on maintenance request signed by tenant as consent to enter



# Maintenance

- Ensure effective reporting process that allows tenants to make maintenance requests
- Do not turn blind eye to complaints that may not be received in accordance with your process i.e. verbal instead of in writing
- Respond to maintenance requests within reasonable time
  - What is considered reasonable will be based on maintenance issue
- Conduct, at minimum, annual unit inspections
- Have regular maintenance regime, pest control regime and action plan in place



# Considerations by LTB

- Generally, Board will not hold landlord liable if landlord was unaware of maintenance issue
- Landlords are not required to cater to a hypersensitive tenant
- Tenants must take reasonable steps to minimize their losses
- Tenants do not have right to dictate repair methods or treatments
- Board will consider if tenant failed to co-operate with landlord's attempts to repair or treat rental unit
- Tenants must file an application within 1 year of discovering the problem.



# Your best defense

- Demonstrate to Board that landlord responded to complaints:
  - Within reasonable period of time
  - Took reasonable steps to address problem
- Evidence
  - Documentation relating to attempts to address Tenant B's behavior
  - Witnesses with first hand knowledge



# Document, document, document!





# The hearing



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# The Hearing

- **Step 1** - Opening statements
- **Step 2** – Applicant gives evidence and is cross-examined and, if warranted, applicant re-examines
- **Step 3** – Respondent gives evidence and is cross-examined
- **Step 4** – Rebuttal evidence: if new issues
- **Step 5** – Closing submissions



# How do I prepare?

<b><u>Step</u></b>	<b><u>Action</u></b>
<b>Review Pleadings</b>	<b>Review Notices, Application &amp; filed documents</b>
<b>Determine Facts to be Proven and Anticipate Likely Defenses</b>	<ul style="list-style-type: none"><li>• Review RTA and Interpretation Guidelines</li><li>• Choose and note up cases; and</li><li>• Make 2 copies of each case</li></ul>
<b>Assemble Proof</b>	<ul style="list-style-type: none"><li>• Gather original documents and organize them in logical order</li><li>• Make 3 copies</li><li>• Contact and summons witnesses</li></ul>
<b>Prepare questions for the witnesses.</b>	<b>Use witnesses to prove material facts and enter documents</b>
<b>Prepare closing statements</b>	<ul style="list-style-type: none"><li>• Summarize evidence</li><li>• Explain and submit case law</li><li>• Apply law to facts of case</li><li>• Request order with reasons</li></ul>

# Legal resources

- Secondary sources (e.g., Residential Tenancies in Ontario by Jack Fleming or Residential Tenancies by Richard Feldman).
- Annotated Statute
- Free online sources:
  - LTB website: <http://www.ltb.gov.on.ca/>
  - CANLII website: <http://www.canlii.org/en/>
- Fee based online sources
- Law Libraries



# Know the answer

In a murder trial, the defense lawyer was cross-examining the coroner:

Lawyer: Before you signed the death certificate, had you taken the pulse?

Coroner: No.

Lawyer: Did you listen to the heart?

Coroner: No.

Lawyer: Did you check for breathing?

Coroner: No.

Lawyer: So, when you signed the death certificate, you weren't sure the man was dead, were you?

Coroner: Well, let me put it this way. The man's brain was sitting in a jar on my desk. But I guess it's possible he could be out there practicing law somewhere.



# Mediation

<b>You determine the outcome</b>	<b>Higher satisfaction</b>
<b>Predictable outcome</b>	<b>Informality</b>
<b>The focus is on needs and interests</b>	<b>Faster than going to a hearing</b>
<b>Preserves relationships</b>	<b>Lower cost</b>
<b>Mediation deals with feelings</b>	<b>Private</b>







# QUESTIONS?



# How did we get here?

- Tenant A has been complaining to landlord
  - Tenant B's loud disturbances
    - Going on for past 10 months
  - Filed T2 Tenant Application about Tenant Rights
    - Seeking \$10,000 for pain and suffering
- Tenant A told superintendent
  - Burner on stove not working
    - Took too long to fix it
  - Filed T6 Application about Maintenance
    - Seeking \$1,000 for having to eat out





# How ONPHA can help you

## 1. Visit ONPHA online:

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

- handbooks and guides
- sample lease, policies
- Info Ons

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

## 3. ONPHA Education Program

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

## 4. ONPHA Conference

- Join us in Toronto  
October 26 – 28, 2018



Thank you!

*ONPHA values your opinion. Please complete the course evaluation.*

