



208: The Pros and Cons of Mediated Agreements

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Today's Workshop

- Brief Introduction to mediation at the LTB
- Overview of the enforcement clauses available
- Problems and issues that can arise
- Case Study – Discussion
- Questions



What is mediation

Mediation is a confidential process where a trained professional tries to guide or assist the parties to reach a settlement of their issues



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Legislative Overview

- *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
 - R13 (Page 28) – Mediation by the LTB
 - www.ltb.gov.on.ca
- *Ontario Human Rights Code*



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Residential Tenancies Act and Rules of Practice

- Section 194 establishes that the LTB may mediate a settlement of any matter before it, and provides that settlements can contain provisions that run contrary to the act.
- Orders must only deal with matters within the jurisdiction of the Landlord and Tenant Board
- Rule of Practice 13 regulates the conduct of mediations



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Mediation

- LTB employs mediators
 - Professionally trained
 - Neutral third party
 - Available on hearing day
- Process
 - Voluntary
 - Confidential



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Pros: The benefits of mediation

- You decide what the terms will be
- You have some control over content
- Can discuss things that aren't immediately relevant but necessary in order to come to an agreement
- Discussion is confidential and off the record
- Hearings are adversarial by nature



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Cons: Is there a downside?

- Sometimes inappropriate
- Discussion is confidential and off the record
- You could feel pressured into an agreement that is wrong for you or the situation



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What are the Goals?

- Help participants achieve their own resolution
- Arrive at a workable agreement you can live with
- Defining a roadmap of what will happen in the future
- Setting expectations for behaviour
- Defining what will happen if one side breaks the deal



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Mediation Goals...

- Contract or Agreement, signed by the parties
- An order, on consent, issued by the Landlord and Tenant Board



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What Issues Will You be Mediating – Tenant Applications

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



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What Issues Will You be Mediating – Landlord Applications

- Rent
- Substantial Interference
- Illegal act (including misrepresentation of income)
- Impaired safety
- Assignment or sublet of the rental unit



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LTB Rules of Practice: Rule 13

A Mediator

- Can end a mediation session before an agreement and it will then proceed to a hearing
- Shall explain the effect of any provision that may be inconsistent with the RTA before the party signs
- Shall not offer a personal opinion or give advice on the merits
- Shall not reveal information to other persons, including Board Members



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LTB Rules of Practice: Rule 13 (cont'd)

A Mediator

- Cannot disclose information to any person without consent and does not retain documents (other than interim settlements of procedural matters) unless required by law,
- If money was paid into the board, a mediator can direct payment to the parties.
- Can do partial agreements, leaving only the unresolved parts to be adjudicated at the hearing;
- Can help the parties prepare agreed statement of facts for the hearing.



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What should you put in the agreement?

- Try to be creative and think to the future of the relationship
- Ensure that you put in "next steps"
- Realize that you can hold each other to an agreement but you cannot bind third parties
- Decide whether it is in your interest to be broad or narrow in your terms
- Decide on the length of the agreement



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Are you the Applicant or Respondent?

Usually...

- If you are the respondent, you will want to keep the clauses as specific and narrow as possible.
- If you are the applicant, you will likely want to keep the clauses broad, so as to bind the other party in the future



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Example: Interference

- Frequently it is useful to put in the full clause from the RTA:

The Tenant agrees next 12 months, she, another occupant of the rental unit or a person permitted in the residential complex by the tenant shall not substantially interfere with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant, nor substantially interfere with another lawful right, privilege or interest of the landlord or another tenant.



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Example: Interference (cont'd)

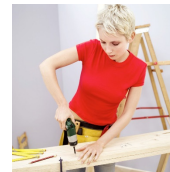
- This includes, but is not limited to:
 - Ensuring that her rental unit is properly prepared for all pest control treatments, upon receipt of 24 hours written notice from the Landlord;
 - Maintaining the unit to a standard of ordinary cleanliness as required by s. 33 of the RTA;
 - Notifying the landlord within a reasonable time of any maintenance or repairs that may be required.



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Example: Tenant application

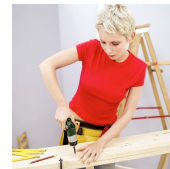
- Frequently it is useful to put in the full clause from the RTA:
 - *The landlord shall maintain the complex and unit in a good state of repair and fit for habitation and comply with health, safety, housing and maintenance standards.* This includes but is not limited to, doing the following repairs:
 - Repairing the hole in the ceiling within 10 days from this agreement;
 - Fixing the broken staircase within 5 days of this agreement;
 - Responding to maintenance requests within a reasonable time period;



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Example: Tenant Maintenance Application

- If you are the Landlord you may wish to limit what you agree to:
 - The Landlord agrees to:
 - Repair the hole in the ceiling within 10 days from this agreement;
 - Fixing the broken staircase within 5 days of this agreement;
 - The parties agree that all matters between them are fully and completely resolved by the execution of this agreement.



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Terms of the Agreement

- Decide how long the agreement will last, and in particular, the term of enforcement.
- Ask yourself what will happen if there is a breach of the agreement
 - Will you “re-open” the mediated agreement (and what are your expectations);
 - Will you file an application to terminate the tenancy?
- What are the penalties of non-compliance



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Enforcement of Settlements

- Breach of the Agreement
 - Rule 13.13 allows either party to “re-open” the application due to a failure of the other party to meet any of the terms of the written mediated agreement.
 - Section 78 allows a landlord to apply, **without notice to the tenant**, for an order terminating the tenancy.
- Remember that when you go back to the LTB the adjudicator still only has the jurisdiction granted in the act.
- Watch the timelines and limitation periods!



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Re-Opening an Application

- Grounds for re-opening
 - The other side coerced you or deliberately made false or misleading representations which had a material effect on the agreement.
 - A breach of a clause of the agreement.
- Form is a "Request to Re-Open an Application"
- Within 12 Months! Unless you agreed, at the time of signing the agreement, that there would be a longer re-opening period.
- There will be a hearing: Bring your Evidence!



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Section 78 of the RTA

- Form L4 "Application to Terminate – Tenant Failed to Meet a Condition of a Settlement or Order"
 - Affidavit
 - Copy of Agreement or Order
- Within 30 days of the breach of the agreement.
- The breach must be in relation to a condition that if not met by the tenant would give rise to the same condition as were claimed in the application
- The Board will order the tenancy terminated, generally within 10 days.



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Possible issues with s.78

- A first N5 for damage can be "actioned" if the tenant fails to repair or pay for the damage.
- An N7 for damage is served because a tenant wilfully damaged the unit, not because he or she did not pay for the damage.



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Example: Tenant damage

- You served a first N5 because of noise and disturbances
- You served a second N5 because the tenant left a pot on the stove and went out to a bar, and had a small kitchen fire
- Damage + LTB = \$1670



You agree to mediate a settlement. The tenant's income is ODSP. What are the issues? What clauses should you include?



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Enforcement under Section 78

- Which of the clauses that we came up with to put into our mediated agreement can be enforced by section 78?
- Definitely:
 - Not to damage
 - The tenant shall not substantially interfere;
 - Any specific clauses which you include which could be considered substantial interference
- Possibly, but...
 - Payment



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Mediated Agreements

- You can include both methods of enforcement in one agreement with s.78 applying to select clauses and others to be enforced by re-opening the application



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Orders with Conditions

- If your settlement includes a termination of the tenancy it must be in a consent order
- An Order must comply with the act, though the preamble could reflect certain agreements.
- Section 204 – Board can include conditions it considers fair in the circumstances



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Process – Request to Re-Open

- File "Request to Re-Open" together with copy of the agreement.
- What is the breach
- When did it occur
- Is it of a serious enough nature to warrant an eviction
- Do you have witnesses and evidence
- Serve Notice of Hearing and Request to other party
- Prepare for your hearing
- The LTB is still required to look at s.83



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Process – L4 Application

- File L4, together with an affidavit and a copy of the mediated agreement;
- Affidavit will specify what the breach was
- When it occurred
- The Board will issue an Order terminating the tenancy.
- A copy will be sent to both parties



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Arrears of Rent and s. 78

- Termination + arrears
 - Your affidavit must also specify the amount of any additional arrears, NSF charges.
 - Amount and date of each payment made and what the payment was for
 - Amount of rent deposit, if any.
- Termination Only
 - Consistent Late Payment
 - Bankruptcy
 - *Peel v. Siewnarine*



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Orders under section 78

- Rent arrears
 - Can order payment of arrears; new arrears; NSF fees,
- Compensation for occupancy after the date of termination;
- Payment of Costs (LTB fee).
- Termination of the tenancy



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Set aside Motion

- A tenant can file a "set aside" motion
- There is no test or standard to get them to the hearing;
- A hearing will be scheduled – bring your evidence!
- The hearing will be on the breach (not what happened in the past, or what was in the application)
- The LTB is still required to look at section 83



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Summary

- An agreement gives the parties time to try to solve the problem;
- If there is a breach the issues are generally simplified as you are likely dealing mainly with a breach;
- Shows good faith on the part of both sides
- Adjudicators are human and will not want to terminate without seeing that there was some attempt to resolve issues.



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Questions?

