



ONTARIO NON-PROFIT
HOUSING ASSOCIATION

Karen Restoule
Associate Chair
Landlord and Tenant Board
Submitted via email to: LTB@ontario.ca

August 20, 2020

**Re: Feedback on proposed revisions to Landlord and Tenant Board Rules,
Guidelines and Forms**

Dear Ms. Restoule,

Thank you for providing the Ontario Non-Profit Housing Association (ONPHA) the opportunity to participate in the Landlord and Tenant Board's (LTB) stakeholder engagement about changes that have been proposed to support the provision of fair and efficient dispute resolution and in response to the passage of the *Protecting Tenants and Strengthening Community Housing Act*.

Founded over 30 years ago, ONPHA is a member funded and directed association that represents over 730 non-profit landlords and local housing corporations throughout the province. The community housing sector provide safe, affordable and stable housing for half a million low- and moderate-income Ontarians with assets close to \$30 billion.

We greatly appreciated the opportunity to share input with you and your colleagues via videoconference on August 18, 2020 and are pleased to submit further comments about certain proposed changes.

General Comments and Recommendations

Addressing Shortages and Resource Capacity

ONPHA was very pleased to hear about the progress towards filling adjudicator vacancies across the province. Like the LTB, it is our hope that this will address costly delays and alleviate backlogs quickly. As adjudicators take on their new roles, ONPHA urges the LTB to prioritize adequate training for them. We would be pleased to work closely with the LTB to provide education around the purpose, contexts and challenges related to community housing.

In addition to increasing the number of adjudicators, we also encourage the LTB to increase their administrative capacity to better support customer service. This increased capacity will be important as the LTB responds to significant backlogs that will have increased even more in

light of the current Covid-19 situation, supports both tenants and landlords through potential technology challenges, and has more responsibilities allocated to it (i.e. landlords pursuing compensation from former tenants).

Provision of Fair and Efficient Dispute Resolution Services

We were pleased to hear more about the changes that have been proposed related to the provision of fair and efficient dispute resolution services at the LTB. ONPHA has long advocated for this, and we appreciated learning more and providing input towards this goal.

While we support increased access to mediation and other alternative dispute resolution processes for landlords and tenants, it is critical that that these processes recognize the power imbalance between landlords and tenants. While these changes might expedite the resolution process, they may also disadvantage tenants, who often have less resources and knowledge related to landlord-tenant law. These impacts and disadvantages are likely to become even greater in light of Covid-19. As there is an increase in virtual hearings and service delivery, many low-income tenants who do not have ready access to technology may be prevented from participating fully or seeking adequate legal counsel or representation.

Therefore, we recommend that the LTB recognize and actively work to mitigate power imbalances between landlords and tenants to ensure equitable access and outcomes. A number of specific recommendations related to this are included in reference to specific procedure changes below, and we encourage the LTB to continue exploring and consulting on additional ways to ensure access to equal justice to all parties.

Ongoing Stakeholder Engagement

ONPHA was also happy to hear about the LTB's commitment to ongoing engagement with stakeholders as further changes to processes are required and considered. We greatly appreciated the opportunity to participate in the LTB's former Practice Advisory Committee and we and our members look forward to being involved in future discussions and engagement.

As a provincial association representing Ontario's community housing providers, we are in a unique position to provide information, input and feedback on behalf of a large group of stakeholders, and we would be very happy to work with the LTB to determine the best ways to provide this information on an ongoing basis.

In the interim, the remainder of this letter contains specific recommendations about the LTB's new Payment Agreement Form and certain changes that have been proposed to the Rules of Procedure.

Recommendations about Specific Proposed LTB Changes

Proposed Payment Agreement Form

In order to increase tenant understanding of rights and responsibilities, we recommend that additional information be included on the proposed form about where and how tenants can seek legal counsel before agreeing to a payment agreement (i.e. a website or phone number), and that the form be amended to include more explicit information for tenants about the consequences of missing a scheduled payment.

Additionally, we recommend that the chart for scheduled payments located on the third page be expanded to allow for a longer payment agreement period or that the form clearly indicate that additional pages should be attached if the tenant and landlord agree to a longer term agreement. Community housing landlords are strongly committed to eviction prevention and working with their tenants to maintain successful tenancies. Often, this requires a longer-term payment agreements and this need is expected to increase in light of Covid-19.

Proposed Changes to the LTB Rules of Procedure

Rule 5: Service of Application and Notice of Hearing (5.1)

Proposed wording has been added to Rule 5.1 stating that “the LTB will not serve evidence that the parties intend to rely upon the hearing”.

Given that parties sometimes include documentary evidence as part of an application, we recommend that the LTB clarify their intent with this new wording. If the intent is that the LTB will still serve evidence or attachments that were included as part of an application, we recommend that the sentence be amended to add “*unless it was included as part of the application*”.

Rule 7: LTB Proceeding (7.1; 7.2; 7.3; 7.4)

Proposed changes to Rule 7 (7.1; 7.2; 7.3; and 7.4) would allow for an increased ability to hold pre-hearing conferences, Case Management Hearings (CMH) or hearings in writing, by telephone or by other electronic means.

It is understandable in the current circumstances that the LTB is trying to hold as many hearings as possible remotely. However, it is important to acknowledge that many low-income tenants may not have ready access to private phones, computers or the internet which could significantly impair their ability to participate fully or to seek duty counsel.

Therefore, we recommend that the LTB consider providing tenants who need it access to phones in the rooms presently used for mediations or duty counsel on the day of a hearing so

that they can participate fully, and that the LTB provide explicit and clear information about how and where tenants can seek legal counsel or representation ahead of and at any pre-hearing conference, CMH or hearing.

Rule 10: L1/L9 Hearings (10.2)

Proposed additions to Rule 10 (10.2) would require the landlord to provide an L1/L9 update form where an L1/L9 hearing is conducted as an electronic or written hearing in accordance with any order or direction for disclosure made by the LTB.

We recommend that the LTB further consider and set out methods to serve an L1/L9 update form for hearings that will be conducted via phone, and for tenants who may not have access to a computer or the internet on the day of their hearing. As highlighted above, some tenants may not have ready access to technology and would need to receive the updated form through an alternate method.

Rule 19: Disclosure and Evidence (19.3)

Proposed amendments to Rule 19.3 have been made to enable the new legislative requirement for tenants to provide advance written notice when they wish to raise maintenance or other issues as a defense to eviction for rent arrears. The amended rule would require tenants to provide at least five business days advance notice if they intend to raise issues of this nature. As part of this advance notice tenants would be required to provide the LTB and the other parties with a written description of each issue they intend to raise, and a copy of all documents, pictures and other evidence that they intend to rely upon at the hearing.

We do not believe that five days advance notice is sufficient for a landlord to go through evidence and to gather their own evidence which may include calling witnesses. Other orders for disclosure are routinely granted much more time than this. Further, if the landlord receives this notice only five business days in ahead of the hearing and realizes they need to make a request for rescheduling this may not be possible given the proposed amendments to the Rule of Procedure around rescheduling. According to these proposed amendments, any requests for rescheduling would, in the absence of exceptional circumstances, need to be made at least five business days in advance and with the consent of all parties.

Therefore, we recommend that Rule 19.3 be amended to require tenants to provide at least ten business days advance notice when intending to raise maintenance or other issues as a defense to eviction for rent arrears. This would allow landlords more sufficient time to review the written description and documentation, and could also serve to alleviate administrative burdens associated with requests for rescheduling.

Rule 19: Disclosure and Evidence (19.4)

Proposed amendments to Rule 19.4 states that “a tenant who fails to provide the Board and other parties with a written description of each issue they intent to raise at the hearing in Rule 19.3 shall not be permitted to raise issues under sections 82(1) or 87(2) of the *Residential Tenancies Act* 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”.

We recommend that Rule 19.4 be amended to be consistent with requirements laid out in Rule 19.3 and stipulate that a tenant shall not be permitted to raise issues during a hearing if they have not also provided the LTB and other parties with copies of documents, pictures and other evidence that they intend to rely on.

Rule 19: Disclosure and Evidence (19.5)

Proposed amendments to Rule 19.5 would permit a party to refer to electronic material (audio or video recordings, emails, text messages, social media posts) in the hearing if relevant to the issues in dispute and the Member is satisfied it is reliable.

Different adjudicators may have different interpretations and opinions about what forms of electronic material could be considered reliable. Therefore, we recommend that the LTB set out standards for the use of electronic material as evidence. We also recommend that the LTB provide access for tenants to technology in order to ensure their full participation in cases where electronic evidence is presented.

Rule 21: Rescheduling and Adjournments (21.1)

Proposed amendments to Rule 21.1 set out that, absent exceptional circumstances, any requests to reschedule a hearing will only be considered if made with the consent of all parties and if received not less than five business days before the scheduled hearing. Proposed changes to the Rule also set out that consent would be required even where the notice of hearing and application have not been delivered to the responding parties.

We have several concerns about proposed changes to this Rule. First, we are concerned about the standard of “exceptional” and feel that “reasonable” may be a better standard, especially in the current situation with Covid-19 where people may not have the same access to documentation (i.e. a doctor’s note). Second, we are concerned about the onus being placed on parties to justify “exceptional” rather than “reasonable” circumstances when many rescheduling requests are the direct result of delays in scheduling and lack of customer service options at the LTB to quickly obtain hearing dates that all parties are available for.

In light of the above, we recommend that, in order to ensure equal access to justice and procedural fairness, the LTB should qualify what is meant by “exceptional circumstances” or consider using “reasonable” as a better standard. We also recommend that the LTB provide guidance and examples about possible reasons that a rescheduling request may be granted (i.e. if a tenant, representative or witness is sick, or if a party has another appointment such as court or a business meeting).

In addition, we strongly recommend that the LTB look to improve services by phone and online to better accommodate requests to reschedule and to facilitate a more efficient and immediate scheduling process to begin with. The immediate scheduling of hearings used to occur when applications were filed in person, and we strongly believe that reintroducing the ability to immediately schedule hearings upon an application being made would alleviate significant challenges and administrative burdens related to rescheduling requests that occur when changes in availability happen during the, sometimes significant, time between an application being filed and a hearing being scheduled.

We also recommend that the proposed requirement for consent of all parties even where the notice of hearing and application have not been delivered to the responding parties be removed.

Rule 21: Rescheduling and Adjournments (21.2; 21.3)

Rules 21.2 and 21.3 set out that the party requesting the rescheduling must file a list of unavailable dates for both parties and any representatives, and that the parties must then contact the LTB to learn whether the request is granted and, if granted, the date of the rescheduled hearing.

We do not believe that the onus should be on the parties to find out if the request is granted. First and foremost, we believe it should be the responsibility of the Board to communicate with parties about rescheduled hearing dates. Further, it is often hard to reach someone at the main LTB office via phone, physical offices are currently closed and the LTB website does not provide enough information about the status of requests.

Therefore, we recommend that Rule 21.3 be amended to place the responsibility of communicating official notice of rescheduled hearing dates to all parties on the LTB. However, we also recommend that the LTB website be updated to facilitate the provision of additional information about hearings (i.e. the status of a hearing date, whether a request to reschedule has been received or granted) so that parties have quick access to up-to-date information.



Thank you again for the opportunity to provide input and for taking the time to review our submission. ONPHA and our members look forward to continuing to engage and work closely with the LTB in the future.

Sincerely,

Marlene Coffey
Chief Executive Officer