



## ARTICLES

### What the Landlord & Tenant Board Spends Most of its Time Doing and How Landlords Can Protect Themselves

**L****T****B** The letters mean the Ontario *Landlord and Tenant Board*. But it could just as well mean “*Let Tenants Be*” or “*Landlords To Blame*.”

It is well known among landlords, their industry advocates, and “professional tenants” that the LTB has a bias towards defending tenants’ rights, sometimes with little regard for the reasonableness of a tenant’s claims or demands.



Take the case where an LTB adjudicator readily admitted that the landlord carried no responsibility for a fire caused by another tenant, and that the landlord had done

everything required of them with respect to insurance and the law. Despite the landlord’s complete innocence in this matter, the landlord was required to pay ninety percent of a rent abatement demanded by the tenant for the loss of use of the unit while it was being repaired. Even after that, the tenant still asked for one hundred percent.

Notwithstanding the above, it may surprise you to learn that more than nine-tenths of all applications made to the LTB come from landlords, and three-quarters of the landlords’ applications are about tenants not paying rent. Two-thirds of LTB’s expenditures (\$19 million of \$28 million or 67.8%) were for staff salaries and benefits. Simply put, the LTB spends more than two-thirds of their budget on a staff payroll that spends more than two-thirds (70.7%) of its time mediating disputes over

*Nine-tenths of all applications filed with the Ontario Landlord and Tenant Board are made by landlords, of which three-quarters of those are for non-payment of rent.*

nonpayment of rent. The greater irony is that the \$11.7 million revenue the LTB collected in fees was paid mostly by landlords.

According to LTB’s 2010/2011 Annual Report, a total of 77,393 cases were processed. Of that, 91.3% (70,639) were made by *landlords*. The remaining 8.7% (6,754) were made by tenants. Of the total landlords’ applications, 75.3% (53,182) were for L1s or “*Terminate & Evict for Non-Payment of Rent*”. A further 1,499 (2.1%) were for L2s or “*Application to Collect Rent*.” Reviewing the total of *all* cases from tenants and landlords, the LTB spent 70.7% ((53,182 + 1,499) / 77,393) of its time processing L1s and L2s.

From their website, the LTB’s role is to “*provide information about the Residential Tenancies Act [“RTA”] and to resolve disputes between most residential landlords and tenants*.” LTB’s statistics suggest that it is primarily in the business of mediating between tenants who don’t want to pay rent and landlords who have an expectation that they should. And, most landlords don’t realize that the LTB will either evict the tenant or recover their money, but not both.

Managing a rental property is not a passive undertaking. A landlord has many responsibilities, including a disproportionately heavy legislative burden, which can dramatically impact the unwary investor and discourage them from investing in, and providing, this badly-needed service.



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Consider the LTB's inexplicably long rent dispute process. It often takes upwards of five months to evict a non-paying tenant, with little hope for the landlord to recover any of the rent incurred during the term of the dispute.



According to a 2011 report titled, *Justice Denied*, from the Federation of Rental-housing Providers of Ontario (FRPO), the LTB typically takes ninety days to resolve a dispute, which typically costs the landlord about \$5,200. This is a

substantial loss for a one-to-three unit rental property, especially if the property, like most investment properties, carries a mortgage. FRPO's estimated loss does not include lost time, administrative costs, and lost productivity. A "professional tenant" can further exploit weaknesses in the LTB's internal review process and employ subsequent Superior Court appeals to bilk landlords of up to a year's rent.

Despite the mostly unfair stereotype of "ruthless landlords," the truth is that these rent nonpayment issues cause severe financial and emotional distress for a landlord, while the tenant suffers virtually no consequences for their actions.

Heap on the landlord's shoulders the bias of all levels of government, and all Ontario political parties, which pander to the significant voting base of tenants (versus the relatively tiny community of landlords). This bias has

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*Current legislation allows a "professional tenant" to bilk a landlord of as much as one year's rent, plus associated hard and soft costs.*

resulted in some notable unbalanced legislation, especially in the RTA.

Now add to the complexity of rental housing management the evolving legislation concerning hoarding, a high-profile issue that is officially classified as a mental illness, as well as the extended interpretations of the Human Rights Code.

Government may not be talking about it but there's a housing shortage crisis, if low vacancy rates are any indication. Vacancy rates in many municipalities are the lowest they've been in a decade or more. Social housing is a significant tax burden. One solution is to attract private investment to reduce the rental housing shortage crisis. Most rental housing renovations occur when new landlords acquire a property, much like home owners do when purchasing a resold (not newly-built) home.

Revenue Canada's capital gains tax and Recoverable Capital Cost Allowance (RCCA) are powerful tax disincentives that discourage rental housing owners that have owned their property for many years, from selling their properties to new owners who are likely to invest in property improvements.

So here's my dark prophesy; the continuing, uncorrected systemic abuse of Ontario landlords by Ontario municipalities and the provincial and federal government will continue to feed the dramatic increase in rental housing shortages.

There has been very little new rental housing construction since the late 1970s, and this trend will continue. Perhaps most importantly, the quality of



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the existing aging rental housing inventory will drop to minimum living standards. This lower quality of tenant lifestyle may result in lower rents—good for tenants less concerned about quality of home lifestyle; bad for investors and operators—so long as there are “better” properties available. However, if the quality of all properties is eroding, then rents will not decrease.

Let’s assume rent decreases. Therefore, there will be decreases in net operating income for landlords, and ultimately, a reduction in property tax revenue for government from the rental housing industry. How will current government policy address the rental housing shortage? Increase social housing programs and the hefty tax burden that they carry.

Any way you slice it, the government comes out badly with its current housing policies.

Ultimately, many rental housing investors will abandon the Ontario rental housing market. They will look elsewhere to make their investment dollars work for them, with considerably less pain and aggravation, and a promise of a greater return on investment. In fact, I cannot think of another industry or business in the free world where the government micro-manages how much profit an industry can make, and also slaps a low-threshold cap on revenue without any association to operating expenses. One could even argue that this is fundamentally unconstitutional.

So, what can landlords do to protect their livelihood, which, for many smaller investors, also represents their life savings and retirement income?

A big step is to avoid “poor-risk” tenants. Considering the average \$5,200 loss caused by the LTB rent dispute

process, it is better for landlords to leave a unit unrented for a few months, and closely assess every tenant candidate for suitability, rather than succumb to the urge to rent to the first applicant who offers first and last months’ rent.

What are some of the signs to look for in potentially “bad” and “professional” tenants? A lot of it comes from experience and intuition. You must also remain cognizant of your responsibilities under the

Human Rights Code and the Residential Tenancies Act (RTA). Landlords can mitigate the chances of facing an LTB tribunal and losing many months of rent income by properly interviewing and qualifying a candidate before renting to them. This, of course, raises the bar of tenant qualification, slows rental uptake rates, and reduces vacancy rates. Many more Ontarians will find it increasingly difficult to find suitable housing.

Landlords should consider that reducing LTB hearings would reduce the income the LTB receives from landlords. Imagine the impact on the LTB if landlords simply stopped using the LTB to arbitrate rent disputes?

Specific things a landlord can do as part of the application process is to look for red flags during a phone or face interview, which might include the candidate being overly-friendly or conversely, non-communicative or overly defensive. For lower income rentals, a candidate who is quick to point out that they already have money ready for the first and last





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months' rent could possibly be saying that they aren't going to pay the current landlord their due.



Ask them to, "Tell me something about yourself." They may offer details that you can't legislatively ask. Ask them for up to seven years of rent and work

history. Ask why they are leaving their present address. Note particularly any topics they appear to be skirting around and drill down into those in more detail.

Tell candidates that they must confirm with you by telephone their attendance one hour before a scheduled tour of a unit. Otherwise, you will not show up. This not only reduces time wasted with no-shows, but it also establishes the candidate's level of interest in the rental, their respect for other people's time, reflects on their work ethic, and displays their willingness to follow up on what they commit to do.

State in your advertising that credit checks will be performed and photo ID will be required. This will filter out some questionable tenants.

Draft (or buy) a strong rental application with supporting documentation so that you have recourse if anything goes afoul later. This regimen will also discourage tenants with malicious intent or who just don't care about anything except themselves. Your rental application should include information on emergency contacts and the applicant's current place of work place, which you can use later if you have to

serve a notice or want to garnish wages. A parasitic tenant can still be holding a good-paying job. Get a currently-dated employment letter and ask whether the tenant will give you a copy of their most recent pay stub. Employment letters can be easily forged but a pay stub and phone call to the company will minimize the downside of that possibility.

My rental agreement comprises three pages for the agreement, and three additional pages for Schedule A. The schedule lays out the rules of the property, and the respective obligations and responsibilities of the tenant and landlord, including principal points of the RTA, such as landlord access to the unit, locks on doors, who pays for blocked toilets and pest eradication, appliances that are not allowed, use of parking space, and so on.

*Longstanding government abuse towards landlords will ultimately lead to lower tax revenues for municipal and provincial governments.*

Join your local landlord association. There is a wealth of relevant knowledge that can be shared between landlords,

and bad tenants can have reputations that precede them.

Spend the money to do credit checks and understand what the reports are really telling you.

I tell every accepted tenant before they sign the rental agreement that:

- the unit is inspected twice a year, primarily because of the landlord's legislated responsibility for the smoke alarm. However, this also gives you the opportunity to see how the unit is being maintained.



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- they have two primary obligations in order to maintain a happy landlord relationship. Pay the rent on the first of the month, and treat the unit and property with respect (per Schedule A of the rental agreement).
- An LTB N4 form (*Notice to End a Tenancy Early for Non-payment of Rent*) will be automatically issued on the third day of the month if the tenant has not paid the rent on the first. Use common sense with the N4, especially if the tenant has a good rent payment record, and they proactively contacted you to explain their issue. However, don't let your heart rule your head. If the rent isn't quickly paid, explain to the tenant that you must issue the N4 because of the lengthy judicial process of the LTB. Otherwise, you will increase your potential non-recoverable debt exposure.

When your instincts tell you that the applicant will be respectful and honourable but their documentation and credit report make them a risk—eg. a recent divorcee whose credit rating was destroyed by a deadbeat ex-husband; a young person moving to the city to start a new job—then ask for a guarantor and undertake solid due diligence on them. Find out if they own their home, the source of income that can guarantee the renter's rent, etc.

After signing the rental agreement and before the tenant moves in, go through the unit in detail using a move-in inspection form. Record anything that you or the tenant feel should be noted (burn mark on carpet, bad scratch on stove, etc.), take pictures (and date them) of the unit and especially the smoke alarm, and have your tenant sign the form and the photos. Yes,

this is a time-consuming process but would you rather face the LTB tribunal?

Perhaps most important of all, document everything! I can't stress this enough. Rental housing is a business, and you must understand all of the market influences that affect it.

**Summary:** Ontario is among the most heavily-regulated rental housing markets in the world, and the favouritism shown to tenants by all political parties and levels of government has created some unbalanced legislation, as well as significant business challenges for rental housing owners and operators.



The Ontario Landlord and Tenant Board, which manages the real world application of the Residential Tenancies Act, spends two-thirds of their budget on staff salaries, who spend two-thirds of their time resolving rent nonpayment issues.

Government policies and legislation have made it absolutely essential that landlords astutely qualify their applicants to avoid poor risk tenants. **End**



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*I am a commercial realtor (broker), based in Toronto, Canada.*

*As an owner/operator I am also intimately aware of the issues, challenges, personal financial and estate planning considerations, rewards, and sense of accomplishment that come from managing the human relationships, business challenges and operational issues of owning a rental property.*

*I can help you do the same.*

*Christopher Seepe*

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