



Centre for Equality Rights in Accommodation  
Centre pour les droits à l'égalité au logement

August 20, 2020

The Landlord and Tenant Board

The Centre for Equality Rights in Accommodation's Submission on Proposed Changes to the Landlord and Tenant Board Rules of Procedure

## About CERA

The Centre for Equality Rights in Accommodation (CERA) is a non-profit organization founded in 1987 and dedicated to advancing the right to housing. CERA is recognized internationally as a world leader in promoting and protecting human rights in housing and in applying both domestic and international human rights law to address issues of homelessness and poverty. Every year, we assist over a thousand renters facing eviction or a human rights violation in the context of their housing stay in their home and this work provides us with significant insight into the issues faced by renters across Ontario, particularly vulnerable renters, including seniors, newcomers to Canada, racialized individuals, persons with disabilities, and families.

### **The proposed changes to the Landlord and Tenant Board's (LTB) Rules of Procedure undermine access to justice, remove procedural protections for tenants, and increase the likelihood of eviction.**

At CERA, we are deeply concerned that the proposed changes to the Landlord and Tenant Board (LTB) Rules of Procedure undermine access to justice, remove procedural protections for tenants, and increase the likelihood of eviction. Moreover, these impacts will disproportionately accrue to marginalized Ontarians – individuals who are low income, racialized, newcomers, and persons with disabilities.

Navigating the rules and processes of the LTB is a daunting task for most and especially for marginalized tenants who struggle with literacy, language, financial and other barriers, disabilities, and without adequate legal support. Given the above, CERA is very concerned that the proposed changes to the LTB Rules of Procedure will make navigating the LTB process more difficult and inaccessible. By providing landlords with several new ways to circumvent the eviction hearing process at the LTB, these proposed changes place tenants at risk of being pressured into unfair and untenable agreements, increase the risk of eviction, while also removing protections under the *Residential Tenancies Act (RTA)* that allow tenants to raise issues, circumstances and concerns that are often their only defence against eviction. Rather than facilitating the circumvention of the eviction hearing process, the LTB should be ensuring that all tenants' right to a hearing and due process protections remain in place and are strengthened.

#### **Rule 13.1: The LTB may offer dispute resolution services to parties in addition to mediation**

It is undeniable that tenants are at a material, financial and resource disadvantage when negotiating with their landlord to prevent eviction and preserve their tenancy. In some circumstances, these

advantages can be mitigated through the provision of legal advice and legal representation and, in the absence of this provision, by the due process protections that are afforded to tenants during the eviction process. Amendments made to section 194 of the *RTA* allow for the use of “another dispute resolution service,” in addition to mediation and eviction hearings, to resolve matters that come before the LTB. The proposed changes to Rule 13.1 of the Board’s Rules of Procedure allow this new alternative dispute resolution service to be offered by the Board. CERA is highly concerned that, in the absence of specific details about this new process, the new alternative dispute resolution services deny tenants the due process protections specifically available at eviction hearings and undermine tenant’s ability to obtain timely and accessible legal advice and/or representation.

Specific details regarding the nature of the alternative dispute resolution service and how it will work at a practical level are not known. Additionally, the circumstances under which this service will be offered and the type of matters that can be resolved through with this new service also remain unknown. More troubling, from a due process point of view, is the fact that the proposed changes to the LTB Rules of Procedure do not clarify whether this new service may be imposed on parties to an application without their prior consent. Finally, and most importantly, the proposed changes to the LTB Rules of Procedure do not speak to whether the alternative dispute resolution service will provide tenants with the same procedural rights that are guaranteed during the eviction hearing process. For example, it is unclear whether tenants making use of the alternative dispute resolution services will have the opportunity to explain the circumstances under which they are facing eviction and/or describe any material facts that may be relevant to granting relief from eviction.

The availability of timely legal advice and/or representation is necessary to ensure tenants can offset the existing power imbalance between landlords and tenants and fully understand the legal implications of entering into an agreement that resolves an LTB matter. Research shows that only 2.6% of tenants have legal representation at LTB hearings, compared with 79.5% of landlords<sup>1</sup>. To address this imbalance, the process by which the new alternative dispute resolution service is undertaken must ensure tenants are provided with the necessary time and resources to seek and obtain legal advice and/or representation before reaching a resolution using this service. To achieve this, tenants must be made aware, well in advance, of the availability of this new service as well as the process by which it unfolds along with any implications of foregoing an eviction hearing in favour of the alternative dispute resolution service. Where tenants are unable to obtain legal advice and/or representation ahead of time, the LTB must facilitate access to legal information resources that fully explain the implications of entering the alternative dispute resolution process. The LTB must also provide tenants with the necessary time and space to consult Tenant Duty Counsel before and during the alternative dispute resolution process.

Circumventing the LTB eviction hearing process poses a grave risk that the rights and protections afforded to tenants by the *RTA* will be denied. It is imperative that further details about the new alternative dispute resolution service and clarifications to the above questions are provided to stakeholders as soon as they are available. Additionally, ongoing and meaningful consultation with CERA and other stakeholders is necessary to ensure that the new alternative dispute resolution service meets

---

<sup>1</sup> ACTO. (2019, Nov) *We Can’t Wait Report*. Advocacy Centre for Tenants Ontario. p.21 Retrieved from [https://www.acto.ca/production/wp-content/uploads/2019/11/FINAL\\_Report\\_WeCantWait\\_Nov2019.pdf](https://www.acto.ca/production/wp-content/uploads/2019/11/FINAL_Report_WeCantWait_Nov2019.pdf)

the stated goal of timely and effective resolutions to LTB matters without removing the protections and rights afforded to tenants under the *RTA*.

### **Rule 19.3 – New Requirements for Tenants Who Seek to Intend to Raise Issues under Section 82(1) or 87(2) of the *RTA***

Recent amendments to the *RTA* place unfair and punitive burdens on tenants seeking to enforce the right to raise issues under s.82(1) or 87(2) of the *RTA*. Disappointingly, the proposed changes to the LTB Rules of Procedure do nothing to mitigate these burdens and, instead, impose additional and arbitrary burdens on tenants seeking to exercise the above rights.

Research suggests that many tenants face unsafe and/or unsanitary conditions in their rental units, but do not bring these concerns to the LTB due to the difficulty and expense of filing a tenant application<sup>2</sup>. Currently, tenants are provided the opportunity at an eviction hearing to address these issues while defending themselves from an eviction for non-payment of rent. This opportunity is particularly important for vulnerable tenants who may not have the resources to file their own tenant application. Imposing additional and arbitrary burdens on tenants to raise their own issues at an eviction hearing may have the ultimate effect of removing their opportunity to be heard altogether.

The recent amendments to section 82 of the *RTA* impose a requirement on tenants to provide advance, written notice to their landlord of any issues they wish to raise at an eviction hearing under this section. These amendments do not specify the amount of time and/or deadline for providing this notice; nor do they require advanced disclosure of all evidence relating to the issues to either landlords or the LTB. Alarming, and unnecessarily, the proposed changes to the LTB Rules of Procedure go further than the above amendments to the *RTA* by:

- Requiring that tenants provide both the landlord and the LTB with advance written notice of any issues they wish to raise at an eviction hearing;
- Requiring tenants to provide a copy of all the evidence that the tenant intends to rely upon to the landlord and the LTB; and
- Imposing an arbitrary deadline of five (5) business days for tenants to provide the above notice and disclosure of evidence to the landlord and the LTB.

CERA notes that the above deadline of five (5) business days does not account for the fact that Tenant Duty Counsel services are typically only available to tenants on the day of an eviction hearing.

It is necessary to note that the LTB Rules of Procedure do not require the disclosure of evidence by landlords to tenants and the LTB ahead of an eviction hearing, except under the limited circumstances prescribed by Rule 19.1. The imposition of additional burdens on tenants appear arbitrary and punitive given that these same burdens are not imposed on landlords. CERA is urging the LTB to reconsider placing these additional burdens on tenants and align their Rules of Procedure with the *RTA*.

### **The proposed Payment Agreement form will increase the likelihood of eviction**

CERA is concerned that the proposed Payment Agreement form, and the process under which this form is used, could result in tenants signing untenable payment agreements without a full understanding of

---

<sup>2</sup> ACTO. (2016). Access to Justice: The Case for Ontario Tenants.

[https://www.acto.ca/production/wpcontent/uploads/2017/07/TDCP\\_Report\\_2016.pdf](https://www.acto.ca/production/wpcontent/uploads/2017/07/TDCP_Report_2016.pdf)

the procedural rights they are giving up. Accordingly, the proposed Repayment Agreement form will increase the frequency and likelihood of evictions. Substantial changes are necessary to ensure reasonable and sustainable payment agreements are entered into with full consent by both parties. Further changes are also required to ensure a meaningful consideration of the tenant's circumstances, both financial and personal, prior to the issuance of an eviction Order.

Under section 83(2) of the *RTA*, the Board shall not terminate a tenancy and evict a tenant unless they have reviewed all circumstances and have considered whether it is fair, in light of these circumstances, to delay or refuse an eviction. The protections afforded by Section 83 of the *RTA* are an invaluable lifeline for tenants facing dire circumstances, which are often outside of their immediate control. These protections also ensure that eviction remains an outcome that is imposed only as a very last resort. The protections afforded by section 83 are especially important during the period of the COVID-19 outbreak, where tenant's ability to pay their rent may be negatively affected by illness, caring for others who are ill, caring for children during school and daycare closers, self-isolation requirements, and/or loss of income and employment.

The proposed Payment Agreement form makes no mention of the protections guaranteed by section 83 nor does it make clear for tenants that they will be giving up their right to these protections should they choose to sign a payment agreement. The proposed Payment Agreement form also does not provide the tenant with any opportunity to make the LTB aware of circumstances that may be grounds for delaying or denying an eviction. CERA urges the LTB to change the proposed Repayment Agreement form so that it:

- clearly explains, in an easy to understand manner, the availability of section 83 protections if a tenant chooses to attend an eviction hearing;
- clearly explains, in an easy to understand manner, the fact that tenants are foregoing these protections by signing a Repayment Agreement; and
- gives the opportunity for tenants to explain, and for the LTB to consider, the circumstances under which tenants are facing eviction and any circumstances that would allow the LTB to conclude that it would be unfair to evict a tenant.

CERA notes that the proposed Payment Agreement form imposes an arbitrary maximum of eight (8) payments for tenants to pay the balance of arrears and any additional amounts owing that are claimable by the landlord. Given the current environment, many tenants will be financially constrained for the foreseeable future and only able to commit to small repayments amounts over a longer period. CERA urges the LTB to change the proposed Repayment Agreement form to allow for a payment schedule that meets tenant's needs and can be extended well beyond the current maximum payment periods imposed by the Payment Agreement form.

As of writing, it is unclear whether the LTB will mandate the use of the Payment Agreement form as a prerequisite for issuing an Order made pursuant to s.206 of the *RTA*. If the LTB will accept payment agreements that meet the requirements of s.206(1), but do not make use of the Payment Agreement Form, it is imperative that the LTB will only issue Orders where they are satisfied that:

- the tenant was notified and understood that they were not required to sign the agreement and they were entitled to defend themselves at an eviction hearing;
- the tenant was given a full opportunity to seek legal advice prior to signing the agreement;

- the tenant was notified and understood the signed agreement is a legal contract;
- the tenant was notified and understood which amounts of rent and charges the payment agreement could and could not include;
- the payment agreement contains specific dates and amounts for the tenant to make payments and includes a clear and full description of the consequences for missing payments or not making a full payment;
- the tenant was notified of the ability to re-open an application if a tenant believes the landlord has forced them to sign the agreement or relied on false or misleading information to convince the tenant to sign the agreement.

### **Conclusion**

The proposed changes to the LTB Rules of Procedure are being brought forward in the context of an unprecedented economic crisis caused by COVID19, where an estimated 50,000 arrears applications await processing when the current eviction moratorium is lifted<sup>3</sup>. The mass homelessness that could result from these evictions could be the largest human rights crisis that this province has ever faced and, in their current state, the proposed changes to the LTB Rules of Procedure will only make it easier for that to happen. Moreover, the negative impacts that result from the proposed changes will disproportionately accrue to our most vulnerable and marginalized tenants – people who face multiple barriers including those who are low income, racialized, newcomers to Canada, people who don't speak English, youth and tenants with disabilities. These are all groups who tend to have less information about their rights and ability to assert them. CERA strongly encourages the LTB to reconsider the proposed changes to the LTB Rules of Procedure and instead strengthen protections for tenants in Ontario at a time when they are needed more than ever.

---

<sup>3</sup> Sharp, Alastair quoting Geordie Dent. (2020, May 22). Making rent: Ontario landlord and tenant groups expect arrears to grow. The National Observer. Retrieved from <https://www.nationalobserver.com/2020/05/22/analysis/making-rent-ontario-landlord-and-tenant-groupsexpect-arrears-grow>