



## Tip Sheet For Tenants

# WHEN YOU OWE RENT TO YOUR LANDLORD

*Prepared by the Tenant Duty Counsel Program and funded by Legal Aid Ontario*

***This publication contains general information intended to assist the public at large. It is not legal advice about your situation. You should consult a lawyer or legal worker for advice on your particular situation.***

### WHAT ARE “ARREARS OF RENT”?

The legal term for unpaid rent, or for money that your landlord says that you owe in rent, is “arrears of rent”.

Your landlord can try to evict you if you do not pay your rent. *This can happen even if you are holding back rent because, for example, the landlord has not fixed things in your apartment that you have asked to be fixed.*

### CAN MY LANDLORD EVICT ME BECAUSE I OWE RENT?

Yes, if your landlord follows the proper legal process.

If your landlord wants to evict you legally for arrears of rent, they must give you a chance to have an eviction hearing at the Landlord and Tenant Board (the “Board”) and to give your side of the story.

Before the hearing, your landlord must give you these documents:

#### 1. Notice of Termination (N4 notice)

- The N4 Notice must say exactly how much money you owe.
- It must also give a date by which you can pay the rent back to avoid an eviction hearing. This is called a “termination date”.
- If your landlord is just asking for unpaid rent and doesn’t want to evict you, your landlord does not have to give you a N4 notice.

#### 2. Application For Arrears of Rent and for Eviction (L1 form)

Your landlord can use this form to apply to the Board to evict you if you have not paid the rent by the termination date in the N4 notice OR if the landlord wants to get unpaid rent but not to evict you. Your landlord can also ask for NSF charges on the application form. It costs your landlord a filing fee of \$150 to file this application.

The landlord must give you a copy of the L1 form and a Notice of Hearing which will tell you when your arrears/eviction hearing is scheduled.

## **I HAVE RECEIVED A N4 NOTICE / L1 FORM. DOES THIS MEAN I HAVE TO MOVE OUT RIGHT AWAY?**

**No.** These forms do **not** mean that the Sheriff is coming right away. *If you make any payments to your landlord or superintendent after you get these forms, make sure to get a receipt from them. If they refuse, tell them that it is illegal to refuse to give you a receipt.*

You have the *right to go to a hearing* to tell the Board your story and defend yourself

## **I HAVE RECEIVED A N4 NOTICE/L1 FORM. CAN I SETTLE MY CASE WITHOUT ATTENDING AT MY HEARING?**

Yes, it is possible to settle your case without attending on the date of your hearing. Prior to your hearing day, you may be able to work out a written repayment agreement (payment plan) with your landlord. This permits you and your landlord to reach an agreement to resolve the case without having to attend a hearing. This payment plan would be filed with the Board as a consent order. This consent order cannot include any term that would evict you if you did not pay your landlord.

If you *can* settle your case, the landlord's application could be still be heard by the Board if you did not comply with the payment plan. It is important to obtain legal advice before doing so.

If you *cannot* settle your case, then the Board will hear and decide your case based on the evidence presented at the hearing.

## **HOW CAN I DEFEND MYSELF AT THE EVICTION HEARING?**

Come to your hearing prepared to discuss one or more of the following things:

1. You did not get the N4 notice, the L1 form and/or the Notice of Hearing in the time required by law:
  - N4 notice: if you pay rent once a month, the N4 notice must be served at least 14 calendar days before the termination date on the N4 notice.
  - L1 form and Notice of Hearing: if you pay rent once a month, the L1 and Notice of Hearing must be served at least 5 days (including weekend days) before the hearing date.

If your landlord did not give you any of these forms **and you can prove it**, you can ask the Board member to dismiss the landlord's case for eviction against you.

2. You paid the rent before or after the L1 was filed.
3. You had an agreement with your landlord to pay the rent in another way, e.g. by doing repairs.
4. The amount claimed by your landlord is wrong or is not lawful (legal).
5. Your landlord has added amounts that are not rent to the arrears, (for example, utility bills if the account is in the landlord's name but you have agreed to pay the utilities).
6. You would like "relief from eviction" (that is, you can ask that your landlord's application to evict you be dismissed) because your landlord is in serious breach of his/her obligations as a landlord including the duty to keep the unit in a good state of repair.

To prove that there is "serious damage or disrepair", you will be asked to prove that (a) there is damage or disrepair; and (b) that it is "serious" according to the Board. Some examples: fridge or stove does not work; structural problems with the apartment.

**Note:** If you can prove to the Board that your landlord is in serious breach of their maintenance obligations, the Board *may* also issue an order prohibiting the landlord from increasing the rent until the work is done to fix the maintenance problem(s).

7. As a tenant, you may raise any of the following matters as a part of your defence to a landlord's application for rent arrears and eviction:
  - Maintenance problems
  - Illegal entry
  - Illegal lockout
  - Serious Interference with their Reasonable Enjoyment of the unit
  - Serious Interference with vital services

- Harassment
  - Service/Facility reduced or discontinued
  - Notice of Termination given in bad faith
  - Any other matter that could be raised in a tenant's application.
8. Relief from eviction (that is, a longer time to pay back the money you owe) on "compassionate grounds". This means that you can ask the Board to delay or refuse your eviction if you have special problems which will make it harder for you to find a new apartment. For example: you are disabled, you are on social assistance, you lost your job, you have small children.
  9. You are not a "tenant" under the *Residential Tenancies Act* because, for example you share a kitchen and/or bathroom with the landlord. If you are not a tenant, your landlord must sue you in Small Claims Court for any rent you owe.
  10. You did not live in the rental unit at the time the landlord applied to the Board to evict you.

Bring all of the evidence (e.g. receipts, photos, documents) you need to prove your side in defense. If you have any witnesses who can help you, ask them to come to the hearing. If they can't come, bring a written and signed statement from them to the hearing. It would be best if this statement is a "sworn" statement prepared by a public notary. All lawyers and many travel agents can prepare a sworn witness statement usually for a fee. Notaries public are also listed in the yellow pages.

See the attached checklist to find out what kind of evidence you should bring.

## **AT THE HEARING, THE LANDLORD GOT AN EVICTION ORDER AGAINST ME. WHAT CAN I DO NOW?**

Here are some of your options:

### ***Pay What You Owe Before Your Landlord Goes to the Sheriff***

- Pay all of the arrears before the "termination date" or the date that the landlord is allowed to take the order to the Court Enforcement Office (the Sheriff) to have you evicted. This date will be found on the last page of the order, and will likely be between 7 and 11 days after the date of the order.
  - Think about asking friends or family members if they can loan you money to pay your arrears.
  - If you are on social assistance (OW, ODSP, FBA), call your worker and ask if you qualify for money to help you pay your arrears. If your worker can give you money for rent, ask him/her for a letter which will explain this to the Board.

*If you make any payments to the landlord or superintendent before the termination date, get receipts for the payments.*

- If you are able to pay off all the arrears before the termination date, you should be able to get the Board to cancel or “**void**” the order. Call your local legal aid clinic or ask Tenant Duty Counsel at the Board for help. It is very important to go to the sheriff's office with a stay to show the rent and other money owing under the eviction order if fully paid. Otherwise, even if you have paid all the money you owe to your landlord, you can still be locked out of your apartment by the sheriff.
- If you are unable to pay off all the arrears before the termination date, you can try to work out a payment plan with the landlord. Make sure that any agreement you make with your landlord about paying your arrears is in writing. **There is no guarantee that this will stop the eviction.**

### ***Pay What You Owe After Your Landlord Goes to the Sheriff***

If you are unable to pay off all the arrears before the termination date but you find you can come up with the money before the Sheriff arrives, the you *may* be able to save your tenancy. You *may* have the opportunity to “**void**” the eviction order by payment into the Board of all arrears of rent (including any Sheriff's fees incurred by the landlord at the time) at any time up until the Sheriff actually enforces the eviction order (i.e. changes the locks). **You can only do this once in your tenancy.**

### ***Ask for a Review of Your Eviction Order***

- Get legal advice about “reviewing” the eviction order. This can be done if the decision followed was legally wrong. You must request a review within 30 days of your eviction order. It costs \$50 to ask for a review.

## **WHERE CAN I GET MORE INFORMATION?**

Contact your local **Community Legal Clinic** for free advice on landlord and tenant matters. To find the telephone number for your clinic call Legal Aid Ontario at (416) 979-1446 or 1-800-668-8258.

You can also call the **Tenant Hotline** at 416- 921-9494 for free information and referrals to your local legal clinic.

You can find information on line at [www.acto.ca](http://www.acto.ca) or [www.cleo.on.ca](http://www.cleo.on.ca).

You can call the Landlord and Tenant Board toll free at 416-645-8080 from within Toronto calling area or 1-888-332-3234 from outside Toronto. Their internet address is [www.ltb.gov.on.ca](http://www.ltb.gov.on.ca)

## My Arrears/Eviction Hearing CHECKLIST

Use this checklist to help you prepare for your hearing. Each numbered heading describes a situation that, if it applies to you may help you avoid eviction, if you tell the Board at the hearing.

***Make sure that you bring whatever information you have to your hearing***, especially documents, receipts. Put important papers in an envelope to bring to the hearing. In some cases, depending on how much information that you have on paper, it will be helpful to bring a person to the hearing who can tell the Board what they know about your situation.

1. I did not get all the right forms at the right times.
  - A. **N4 Notice**
    - The landlord served me with a N4 form (if they want to evict me?)
    - I did not get the N4 notice at least 14 calendar days before the termination date on the form.
  - B. **L1 Form**
    - The landlord served me with a L1 notice.
    - I did not get the L1 notice at least 5 days before the hearing date.
  - C. **Notice of Hearing**
    - The landlord served me with a L1 notice.
    - I did not get the L1 notice at least 5 days before the hearing date

If any of the forms are missing or were not given to you in time, use the questions below to help you prepare to prove it.

- Have I made notes about how and when I got the form/s?
  - Do I have a copy of the envelope the form/s came in (if mailed)?
  - Is there someone who saw me get the form/s and can testify?
2. I have paid some or all of the rent that the landlord says I didn't pay
    - Have I made notes about when I made the payment/s?
    - Do I have receipts for the payment/s signed by the landlord or super? (If not, ask for signed receipts right away).
    - I paid by cheque or by direct withdrawal. Do I have cancelled cheques / a bank statement / a bankbook to prove this? (If not, go to your bank and get a printout).
    - I paid by money order. Do I have a copy of the money order?
    - Is there anyone who saw me pay the rent and will testify to that?

3. The landlord agreed to let me “pay” the rent in another way, for example by making repairs to my apartment.

- Have I made notes about my agreement with the landlord?
- Do I have a copy of a written agreement with the landlord?
- Do I have photographs of the work I did in the apartment?
- Do I have copies of any bills for money I spent on labour or supplies?

4. I held back rent because (as an example) there is damage or disrepair in my apartment and the landlord refuses to fix it.

Before the Board Adjudicator, as a tenant, you may raise any matter (that you could otherwise raise in your own tenant application), including maintenance problems or harassment, as a part of your defence to a Landlord’s application for rent arrears and eviction. Therefore be sure to have all your evidence and witnesses ready.

- Have I made notes about the damage or disrepair (include any requests made to the landlord to fix things, and any calls to the City inspector)?
- Do I have copies of any letters I have written to the landlord asking them to fix things in my apartment?
- Do I have photographs of the damage or disrepair?
- Do I have bills for any money I spent repairing the problem?
- Do I have a report from a City Inspector about the disrepair?
- Do I have a letter from the City Inspector saying that I’ve asked them to inspect? (If not, and if you’ve talked to one, ask for a letter.)
- Do I have bills for any damage to my personal property that happened because of the disrepair in my apartment?
- Do I have witnesses with me to help support my case?
- Do I have the documents I need with me to help prove my case?

5. The landlord is saying I owe more than I actually owe OR the landlord is charging me an illegal rent.

- Have I made notes about what I believe the legal rent to be?
- Do I have a copy of my lease showing the legal rent?
- Do I have copies of any notices of rent increase?
- Do I have proof that I’ve paid some or all of the rent that the landlord is saying I owe (see #2 above for details)?

6. The landlord has added amounts that are not “rent” to the L1.

- Has the landlord added NSF cheque charges to the L1?
- Has the landlord added any “penalties” or late payment fees to the L1?
- Has the landlord added any “administrative charges” to the L1?
- The landlord has broken down the rent they say I owe for each month on the bill. Are any of the monthly totals higher than the rent that I actually pay? (If so, they might include some penalties or late charges)

- Has the landlord added costs for any utilities bills which are in the landlord's name but which I have agreed to pay for separately?
  - Have I made notes about what I believe the landlord tried to add to the L1?
  - Are there any other charges included in the L1 which I would like to question?
7. The Board should grant me relief from eviction, by dismissing the landlord's eviction application and allowing me to stay in my rental unit, because the landlord is in serious breach of their obligations to me (serious damage or disrepair to my apartment or major harassment).

**A. Serious Damage or Disrepair**

- Have I made notes about the damage or disrepair? (include any conversations you've had with the landlord or superintendent, with dates if possible).
  - Do I have written proof (letters to the landlord) that I've asked him to fix the problems?
  - Do I have written proof (letters from the landlord) that the landlord refuses to repair my apartment?
  - Do I have photographs of the disrepair or damage?
  - Is there serious disrepair or damage in the kitchen (especially to fridge or stove)?
  - Is there serious damage or disrepair in the bathroom/s?
  - Is there serious damage or disrepair in the bedrooms or playrooms of my child(ren)?
  - Do I have a copy for the Board of any City Inspector's reports or work orders about my apartment?
  - Do I have copies of any complaints I've made to any government agency about the damage or disrepair?
  - Do I have any witnesses who will speak about the serious damage or disrepair in my apartment (family members, other tenants, or friends)?
  - Have I told the Board member at my hearing that I want relief from eviction? (as provided for in the s.83 of the *Residential Tenancies Act*)
8. The Board must consider whether I deserve relief from eviction on "compassionate grounds". This is an obligation that the Board has.

Be aware that most of the questions in the checklist below should apply to your situation if you are going to be able to prove this to the Board with success.

- Do I have a "reasonable explanation" for being behind in rent (for example, on the income I currently have, is it impossible to pay the rent in full?)
- Will I be able to pay the rent owing as it comes due? I pay the rent owing from here on in?
- Am I unemployed but about to get work?

- Am I on social assistance but about to receive help from the welfare or disability office to pay the arrears?
- Do I qualify for a loan from the rent bank?
- Can I make other arrangements to pay the arrears within a “reasonable time” (within the next month or two)
- Do I have “compassionate grounds”?
  - Am I a single parent?
  - Do I have young child(ren) living with me?
  - Do I have a dependent senior person living with me?
  - Do I have a disability or chronic illness?
  - Does anyone living with me have a disability or chronic illness?
  - Do I live in rent-geared-to-income or social housing?
  - Do I access services in my current neighbourhood that I won’t be able to access if I have to move out? (for example, shops, doctors or community centres where I can speak my own language)?
  - If I’m forced to move out of this neighbourhood, will I be in danger of being harassed in public due to my sexual orientation, gender presentation or race?

9. I am not a “tenant” under the *Residential Tenancies Act* and so the Board does not have jurisdiction over whether I get evicted.

- I share a kitchen and/or bathroom with the landlord.

10. I did not live in the rental unit at the time that the landlord filed this application.

Please note that this will not apply if you moved out after the date that the landlord filed the application.

- Have I made notes about when I moved out (include dates)
- Did I get a receipt from the landlord when I returned my keys?
- Do I have a copy of the notice of termination that I gave to the landlord?
- Do I have a copy of my new lease or rental agreement?
- Do I have a bill from the movers I hired?
- Is there anyone that can testify that I moved out when I say I did? (family, friends, roommate).

11. I have a former order from this Board that the landlord has not fulfilled (for example, disrepair) OR I have learned that another tenant has an outstanding order against this landlord at the Board that they have not fulfilled. This means that the landlord cannot bring this application.

- Do I have a copy of the order?
- Do I have any copies of outstanding City Inspector work order/s which are related to this Board order?
- Do I have any other written information that can prove this?