



**Proposal for Changes to the Interpretation Guidelines
of the Landlord and Tenant Board of Ontario
re: the COVID-19 Public Health Crisis**

to Karen Restoule, Associate Chair of the Landlord and Tenant Board,
Eli Fellman, Counsel for Tribunals Ontario,
and Sean Weir, Executive Chair of Tribunals Ontario

September 23, 2020

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Executive Summary

1. In light of the current public health crisis, and the need to prioritize the ability of Ontarians to stay home and prevent the spread of COVID-19 above all else, we respectfully propose that the Interpretation Guidelines of the Landlord and Tenant Board be temporarily amended to reflect current circumstances. Based on our understanding of the needs of low-income and vulnerable tenants, we propose amendments to Interpretation Guidelines 7 and 11 to assist Members in issuing orders that are faithful to the legislative requirements of section 83(1), and in keeping with the public interest in keeping people housed during the pandemic. In particular, we propose that the following directions be added to these guidelines:

Interpretation Guideline 7:

COVID-19

For the duration of the COVID-19 public health emergency in Ontario, and without limiting the Board's power to grant relief from eviction and its duty to consider all the circumstances before deciding that it would be unfair to refuse to grant an eviction application, the Board will ensure that inquiries are made into the circumstances of the tenant and the landlord, as they relate to the pandemic, where eviction is a possible outcome (including in rent arrears cases). The Board inquiry should include the following questions:

- *Would relief from eviction be in the public interest, including the interest in minimizing the spread of COVID-19?*
- *Are there things that can be ordered by the Board that can remedy the issue at hand without needing to resort to an eviction during the COVID-19 pandemic?*
- *How would an eviction order impact the tenant(s) or other members of the household in their ability to practice physical distancing?*
- *Are the tenant(s) or other members of the household at particular risk from COVID-19 as older adults, people with a weakened immune system or a chronic health condition?*
- *Are the tenant(s) or other members of the household presently required to work from home due to COVID-19?*
- *Are the tenants (s) or other members of the household presently caring for children or other dependents in the home due to COVID-19?*
- *Do the work and/or family care responsibilities of the tenant(s) or other members of the household place them at increased risk of contracting and/or transmitting COVID-19?*

- *Do other circumstances of the tenant(s) or other members of the household place them at increased risk of contracting and/or transmitting COVID-19?*
- *Are the tenant(s) or other members of the household at risk of moving to a homeless shelter, long-term care home, retirement home or other congregate setting that would involve a heightened risk of exposure to COVID-19? Are there spots available in local shelters?*
- *If the tenant is low-income, is there alternative affordable housing in their area that they can relocate to?*
- *Is the tenant's community a COVID-19 hot spot?*
- *What is the nature of the tenant's employment income? Could the tenant potentially see a reduction or loss of income due to a pandemic lock down?*
- *Would relief from eviction cause anyone else, including the landlord, to face an increased risk of COVID-19 infection?*

Board Members will endeavor to grant relief where it is in the public interest to prevent eviction, including the interest in minimizing the spread of COVID-19.

Interpretation Guideline 11:

COVID-19

For the duration of the COVID-19 public health emergency in Ontario, and without limiting the Board's power to grant relief from eviction and its duty to consider all the circumstances before deciding that it would be unfair to refuse to grant an eviction application, the Board will ensure that inquiries are made into the circumstances of arrears as they relate to the pandemic. The Board inquiry should include the following questions:

- *Is the accumulation of rent arrears a result of circumstances related to the COVID-19 pandemic?*
- *How has the accumulation of arrears impacted the landlord?*
- *Would an order for the tenant to pay rent owing without any eviction consequence be sufficient to deal with the arrears at hand? Would it unduly prejudice the landlord? Would it be in the public interest, including the interest in minimizing the spread of COVID-19?*
- *Would an extended payment schedule allow the tenant to clear the arrears? Would it unduly prejudice the landlord? Would it be in the public interest, including the interest in minimizing the spread of COVID-19?*
- *Has the landlord, in good faith, attempted to negotiate a reasonable repayment agreement?*

Board Members will grant relief by way of an order for the tenant to pay rent owing without any eviction consequence, or by way of a minimum 12-month standard repayment plan where arrears are due to COVID-19, and where it is in the public interest to prevent eviction.

Where a landlord has not attempted to negotiate a reasonable repayment agreement in good faith, as the Board is required to consider in accordance with s. 83(6), this circumstance favours an order granting relief from eviction. Conversely, the RTA does not require a tenant to enter a repayment agreement, and a tenant's refusal to accept terms proposed by a landlord, should have no impact on the Board's exercise of discretion.

Community Legal Services of Ottawa

2. Community Legal Services of Ottawa (CLSO) is a not-for-profit legal clinic governed by an independent, community-based Board of Directors. CLSO provides legal services to low-income and vulnerable individuals in the City of Ottawa. We provide assistance to thousands of tenants each year by way of summary advice, full representation, and tenant duty counsel services.
3. Our services are heavily focused on the most vulnerable members of our communities, including individuals living in poverty, people living with disabilities, individuals facing language and communication barriers, people with literacy barriers, and members of racialized and Indigenous communities.

Background

4. This is a time of unprecedented crisis for our province. Housing is increasingly unaffordable, while at the same time, it is more important than ever.
5. For years, rents in Ontario have been increasing at rates that far outpace inflation and low-income earner's wages or salaries. For example, as of the most recent census in 2016, 23.8% of all Ottawa households had unaffordable housing – meaning more than 30% of household

income is spent on housing.¹ Disturbingly, a study undertaken last year concluded that a worker would need to earn at least \$26 per hour in order to afford an average 2-bedroom apartment in Ottawa.² With rents at such wildly unaffordable levels, it is no wonder there are 12,513 households on the waiting list for subsidized housing and more than a 5-year wait time for these units in Ottawa.³ For those left waiting, shelters are often the only option, but even these are full. Approximately 600 families are living in emergency hotels in Ottawa, which cost the tax payers \$9.4 million dollars in 2019.⁴ These problems are not unique to our city; they exist across the province.

6. The world is now also contending with a health and economic crisis of historic proportions. Research has shown that homeless populations are disproportionately affected by pandemics, both in terms of infection rates and mortality rates.⁵ People facing homelessness are at greater risk of contracting and spreading COVID-19 for the simple fact that they cannot do what the rest of us are being told to do: they cannot socially isolate.
7. Renters have been greatly impacted by the COVID-19 pandemic, with many losing their jobs, falling behind in rent, and accumulating debt.⁶ It is estimated that 521,000 working tenant households in Ontario have less than a month's worth of savings to fall back on; without such savings, vast numbers of households could find themselves struggling to pay their rent.⁷
8. With the recent lifting of the eviction moratorium, the confluence of the housing affordability crisis and the COVID-19 economic crisis will bring an onslaught of arrears hearings to the Landlord and Tenant Board. As you are aware, the Board received more than 6,500 eviction

¹ <https://www.neighbourhoodstudy.ca>.

² <https://www.cbc.ca/news/canada/ottawa/ottawa-gatineau-kingston-rent-wage-1.5216379>.

³ <https://www.housingregistry.ca/housing-providers>.

⁴ <https://www.cbc.ca/news/canada/ottawa/homeless-family-motel-1.4939329>.

⁵ Leung, C. S., Ho, M. M., Kiss, A., Gundlapalli, A. V., Hwang, S. W. (2008). Homelessness and the response to emerging infectious disease outbreaks: Lessons from SARS. *Journal of Urban Health*, 85(3), 402–410.

⁶ <https://www.policyalternatives.ca/publications/report/rents-due-soon>.

⁷ <https://www.policyalternatives.ca/publications/report/rents-due-soon>.

applications for non-payment of rent during the moratorium.⁸ Many more are sure to be filed now that actionable orders are available for such applications.

9. The Board has also faced immense scheduling pressures in recent years, pressures that will make it difficult for Members to provide full hearing of the circumstances surrounding eviction applications, as is required by section 83(1) of the *Residential Tenancies Act*.⁹
10. It is for these reasons that we are recommending that the Board implement some COVID-19 specific provisions in Interpretation Guidelines 7 and 11 to assist busy Members in issuing orders that are in-line with the legislative requirements of section 83(1), and in keeping with the public interest in keeping people housed during the pandemic.

Recommendations

11. The Landlord and Tenant Board Interpretation Guidelines “are intended to assist the parties in understanding the Board’s usual interpretation of the law, to provide guidance to Members and promote consistency in decision making.”¹⁰ Guideline 7: Relief from Eviction, and Guideline 11: Eviction for Failure to Pay Rent, are particularly relevant to applications for eviction during the COVID-19 pandemic.

GUIDELINE 7: Relief from Eviction

12. Interpretation Guideline 7: Relief from Eviction, discusses the Board’s obligation in accordance with section 83(1) to consider the circumstances of each case to decide whether or not relief from eviction should be granted.
13. It is respectfully proposed that some explicit direction be added to Guideline 7 for dealing with evictions during the COVID-19 pandemic. Specifically, we propose that the following be added under the heading of “Circumstances Justifying Discretionary Relief”:

⁸ <https://globalnews.ca/news/7252350/hamilton-evictions-landlord-tenant-board/>

⁹ <https://www.cbc.ca/news/canada/toronto/ontario-landlord-tenant-board-ombudsman-1.5420860>

¹⁰ The 2019 Annotated Ontario Landlord and Tenant Statues 2020, Mavis Butkis, Thomas Reuters.

COVID-19

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- *Would relief from eviction be in the public interest, including the interest in minimizing the spread of COVID-19?*
- *Are there things that can be ordered by the Board that can remedy the issue at hand without needing to resort to an eviction during the COVID-19 pandemic?*
- *How would an eviction order impact the tenant(s) or other members of the household in their ability to practice physical distancing?*
- *Are the tenant(s) or other members of the household at particular risk from COVID-19 as older adults, people with a weakened immune system or a chronic health condition?*
- *Are the tenant(s) or other members of the household presently required to work from home due to COVID-19?*
- *Are the tenants (s) or other members of the household presently caring for children or other dependents in the home due to COVID-19?*
- *Do the work and/or family care responsibilities of the tenant(s) or other members of the household place them at increased risk of contracting and/or transmitting COVID-19?*
- *Do other circumstances of the tenant(s) or other members of the household place them at increased risk of contracting and/or transmitting COVID-19?*
- *Are the tenant(s) or other members of the household at risk of moving to a homeless shelter, long-term care home, retirement home or other congregate setting that would involve a heightened risk of exposure to COVID-19? Are there spots available in local shelters?*
- *If the tenant is low-income, is there alternative affordable housing in their area that they can relocate to?*
- *Is the tenant's community a COVID-19 hot spot?*
- *What is the nature of the tenant's employment income? Could the tenant potentially see a reduction or loss of income due to a pandemic lock down?*
- *Would relief from eviction cause anyone else, including the landlord, to face an increased risk of COVID-19 infection?*

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GUIDELINE 11: Eviction for Failure to Pay Rent

14. Guideline 11: Eviction for Failure to Pay Rent, discusses the Board's method of ordering payment of arrears and relief from eviction in in arrears applications. Although it is not noted in this Interpretation Guideline, according to Interpretation Guideline 7, the general order in an application for eviction due to arrears will allow a tenant 11 days to repay the arrears in full and maintain the tenancy.

15. The Ontario Legislative Assembly has recognized the important role that will be played by the Tribunal with respect to preventing evictions due to arrears where a repayment plan would suffice. Indeed, s. 83(6) of the Residential Tenancies Act has been introduced in order to ensure that evictions are not the default outcome for non-payment of rent. Minister Clark explained the importance of this, stating as follows:

As Ontario begins to recover from COVID-19 and people return to work, we need to ensure a manageable transition. We need to find a way to keep tenants in their homes, while ensuring that landlords can afford to pay their bills, too, so we don't lose rental units. That's why we're requiring the Landlord and Tenant Board, during a hearing, to consider whether the landlord tried to negotiate a repayment agreement with a tenant if they fell behind in rent after March 17, 2020. This must happen before the board can issue an eviction order for nonpayment of rent...We are doing this to encourage repayment agreements, instead of evictions, for rent arrears accumulated during COVID-19. This highlights to landlords the importance of trying to negotiate a repayment plan and to ensure that tenants who have lost their jobs or are facing challenges as a result of COVID-19 still have a chance to maintain their tenancies.¹¹ [emphasis added]

16. Notably, other parts of the country have adopted province-wide policies to allow for greater flexibility in cases of rental arrears due to COVID-19. For example, in British Columbia, tenants are being given until July 2021 to repay arrears if monthly installments are made.¹²

¹¹ (Ontario, Legislative Assembly, Hansard Transcripts, 42nd Parl., 1st Sess. (14 July 2020) (Hon. S. Clark) (available on-line) at 0920.

¹² <https://www.theglobeandmail.com/opinion/article-we-must-act-now-to-avoid-an-eviction-crisis/>

17. It is, therefore, respectfully proposed that some explicit direction be added to Guideline 11 for dealing with arrears during the COVID-19 pandemic. Specifically, we propose that the following be added under the heading of “Relief from Eviction”:

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- *Would an order for the tenant to pay rent owing without any eviction consequence be sufficient to deal with the arrears at hand? Would it unduly prejudice the landlord? Would it be in the public interest, including the interest in minimizing the spread of COVID-19?*
- *Would an extended payment schedule allow the tenant to clear the arrears? Would it unduly prejudice the landlord? Would it be in the public interest, including the interest in minimizing the spread of COVID-19?*
- *Has the landlord, in good faith, attempted to negotiate a reasonable repayment agreement?*

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Where a landlord has not attempted to negotiate a reasonable repayment agreement in good faith, as the Board is required to consider in accordance with s. 83(6), this circumstance favours an order granting relief from eviction. Conversely, the RTA does not require a tenant to enter a repayment agreement, and a tenant’s refusal to accept terms proposed by a landlord, should have no impact on the Board’s exercise of discretion.

Conclusion

18. The additions of the above to Interpretation Guidelines 7 and 11 would assist Board Members in considering all the relevant circumstances during this unprecedented time. There are significant public policy reasons for the Landlord and Tenant Board to carefully consider the health implications of evictions in the time of COVID-19. Amending the Interpretation Guidelines will make it easier for Board Members to do so, even as they face immense pressures to process backlogs of applications.
19. In light of the current public health crisis, and the need to prioritize the ability of Ontarians to stay home and prevent the spread of COVID-19 above all else, we respectfully submit that the Interpretation Guidelines of the Landlord and Tenant Board be temporarily amended, as indicated above, to reflect current circumstances.

Endorsements

20. This proposal has been endorsed by the following organizations:

Community Legal Services of Ottawa – Executive Director, Gary Stein
Advocacy Centre for Tenants Ontario – Executive Director, Kenn Hale
Grey Bruce Community Legal Clinic – Executive Director, Seana Moorhead
Hamilton Community Legal Clinic – Director of Legal Services, Mike Ollier
Centre Francophone du Grand Toronto French Legal Aid Services – Director, Aissa Nauthoo
Waterloo Region Community Legal Services - Executive Director, Shannon K. Down
Chinese and Southeast Asian Legal Clinic – Executive Director, Avvy Go
Renfrew County Legal Clinic – Executive Director, Amy Scholten
Legal Assistance of Windsor – Executive Director, Marion E. Overholt
Northumberland Community Legal Centre – Executive Director, Sarah Cooling
Legal Clinic of Guelph and Wellington County – Executive Director, Anthea Millikin
Clinique juridique francophone d’Est d’Ottawa – Executive Director, René Guitard
Manitoulin Legal Clinic – Executive Director, Susan Mullen
Community Legal Clinic - Brant, Haldimand, Norfolk – Executive Director, Ian M. Aitken
Sudbury Community Legal Clinic – Executive Director, Monique Woolnough
Community Advocacy and Legal Centre – Executive Director, Gina Cockburn
Durham Community Legal Clinic - Executive Director, Omar Ha-Redeye
HIV & AIDS Legal Clinic Ontario (HALCO) – Executive Director, Ryan Peck
Neighbourhood Legal Services - Acting Executive Director, Kristie Pagniello
Mississauga Community Legal Services - Co-Executive Director, Douglas Kwan
Parkdale Community Legal Services – Clinic Director, Johanna MacDonald
South Asian Legal Clinic of Ontario - Executive Director, Shalini Konanur
Rexdale Community Legal Clinic - Director of Legal Services, Yodit Edemariam
Don Valley Community Legal Services – Executive Director, Marjorie Hiley
The Legal Clinic (Perth) - Executive Director, Ron Cronkhite

Chatham-Kent Legal Clinic - Executive Director/Lawyer, Walter Van de Kleut
Scarborough Community Legal Services - Executive Director, Renee Griffin
Community Legal Assistance Sarnia – Executive Director, Andrew C. Bolter
Algoma Community Legal Clinic - Executive Director, Maija C. Laitinen
Huron Perth Community Legal Clinic - Executive Director, Jamie Hildebrand