



Right to Housing

in Toronto

Landlord and Tenant Board
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VIA EMAIL: ltb@ontario.ca

RIGHT TO HOUSING IN TORONTO SUBMISSION ON PROPOSED CHANGES TO THE LANDLORD AND TENANT BOARD'S RULES OF PROCEDURE

[Right to Housing in Toronto](#)

Right to Housing in Toronto Right to Housing in Toronto (R2HTO) is a network of individuals and organizational supporters that are working to ensure that the City of Toronto takes a rights-based approach to its housing planning and policy. The work of R2HTO is guided by a Steering Committee that consists of ACORN Canada, Advocacy Centre for Tenants Ontario (ACTO), Centre for Equality Rights in Accommodation (CERA), Emily Paradis (Maytree Fellow, Housing and Homelessness Researcher), Federation of Metro Tenants' Association (FMTA), Joy Connelly (Housing Advocate), and Maytree.

[The Human Right to Adequate Housing](#)

The guiding principles of the Right to Housing include access to adequate and affordable housing, security of tenure and protection from arbitrary eviction.

In implementing changes to their Rules of Procedure, the Landlord and Tenant Board (LTB) has the opportunity to better align these Rules with the human right to adequate housing. Swift action to ensure this alignment has never been more necessary than right now, when tens of thousands of Ontario tenants are facing lost income, rental arrears, and the risk of eviction. We urge the LTB to enact changes to their Rules of Procedure to protect tenants' security of tenure, preserve affordable housing and ensure that rental housing is safe and healthy.

Security of Tenure and Protection from Arbitrary Eviction

R2HTO is gravely concerned that the proposed changes to the LTB Rules of Procedure would jeopardize tenants' security of tenure by allowing landlords to circumvent the eviction hearing process and deny tenants the rights and protections afforded by the *RTA*.

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

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. R2HTO is highly concerned that, in the absence of specific details about this new process, the new alternative dispute resolution service may deny tenants the procedural rights made available under the *RTA* and result in eviction without due process.

It is unclear under the proposed changes to the LTB Rules of Procedure 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. It is unclear whether tenants will be given the opportunity and advanced notice required to fully understand the legal implications of the new service and seek timely legal advice and/or representation to better understand same. To remedy any uncertainty and confusion, 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 R2HTO urges the LTB to 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 R2HTO and other stakeholders is necessary to ensure that the new alternative dispute resolution service meets the stated goal of timely and effective resolutions to LTB matters without removing the protections and rights afforded to tenants under the *RTA*.

Payment Agreement Form

With estimates that between 8-15 percent of renter households have been unable to pay all or part of their rent in each of the months of April, May, and June, a large number of Ontario tenants may need to enter into repayment agreements with their landlords. Because a large share of low- and moderate-income workers are facing job losses and steep reductions in income, many tenants will only be able to fulfill these repayment plans if they are reasonable and sustainable. As written, the proposed Repayment Agreement form, and the process by which this form is used, could result in a devastating wave of evictions that would not only violate tenants' right to security of tenure, but impose arbitrary evictions without due process.

R2HTO 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. R2HTO 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 allows for payment agreements that meet the requirements of s.206(1), but do not make use of the Payment Agreement form, there is a substantial risk that tenants will enter into repayment agreements without:

- being notified and without understanding that they were not required to sign the agreement and they were entitled to defend themselves at an eviction hearing;
- the full opportunity to seek legal advice prior to signing the agreement;
- being notified and understanding that the signed agreement is a legal contract;
- being notified and without understanding which amounts of rent and charges the payment agreement can and cannot include;
- specific dates and amounts for the tenant to make payments and without a clear and full description of the consequences for missing payments or not making a full payment; and
- being 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.

The protections available to tenants under Section 83 of the RTA are an invaluable, rights-based 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 available under 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 available under 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. R2HTO 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.

It is the position of the R2HTO that all tenants should be provided with the right to a hearing and all procedural protections available under the *RTA* if they are facing eviction, including those tenants who have been unable to fulfill a Payment Agreement. It is imperative that the LTB exercise any and all available discretion to ensure that repayment plans are sustainable and do not push tenants into debt. R2HTO urges the LTB to make changes to the Repayment Agreement form, and the process by which it is used, that protect the rights of tenants under the *RTA*.

Safe and Healthy Housing

More than 60 percent of applications to the Landlord and Tenant Board are from landlords seeking eviction for arrears, while fewer than 10 percent are from tenants seeking necessary repairs and maintenance for their units. Research suggests that a much larger number of tenants face unsafe or unsanitary conditions in their units, but they do not bring these concerns to the Board due to the difficulty and expense of filing a tenant application¹. 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. The consequences of imposing additional and arbitrary barriers to tenants raising their own issues at an eviction hearing weakens their ability to secure safe and healthy housing.

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*. 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. Alarming, and unnecessarily, these proposed changes to the LTB Rules of Procedure go further required to align the Rules with the above amendments to the *RTA*. The imposition of these additional burdens on tenants appear arbitrary and punitive given that these same burdens are not imposed on landlords. R2HTO is

¹ ACTO. (2016). Access to Justice: The Case for Ontario Tenants.
https://www.acto.ca/production/wpcontent/uploads/2017/07/TDCP_Report_2016.pdf

urging the LTB to reconsider these proposed changes to LTB Rules of Procedure and strengthen the rights of tenants to raise these issues at eviction hearings by removing the proposed additional, arbitrary, and unnecessary burdens.

Sincerely,

On behalf of the Right to Housing in Toronto

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