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How to deal with **NON-PAYING TENANTS**

(and a lengthy LTB tribunal process)



Lengthy delays in resolving tenant disputes can cost landlords thousands in lost revenue. Christopher Seepe explains how you can protect your income and avoid the trouble of non-paying tenants

LTB stands for the Ontario Landlord and Tenant Board. But it could just as well mean "Let Tenants Be" or "Landlords To Blame."

According to 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 annual report, however, indicates that it's spending most of its time mediating between tenants who don't want to pay rent and landlords who believe they should.

Most landlords don't realize that the LTB will either evict the tenant or recover their money, but not both.

According to LTB's 2010/2011 Annual Report, more than 90% of all LTB applications are made by landlords, and 75% of those are about tenants not paying rent. The annual report also indicates that 66% of LTB's expenditures were for staff salaries and benefits.

Simply put, the board spends 66% of their budget on staff salaries, who spend 75% of their time resolving rent non-payment issues.

The great irony is that the \$11.7 million in revenue (of \$28 million, the balance coming from taxes) the LTB collected in fees was paid mostly by landlords.

According to the Federation of Rental-housing Providers of Ontario (FRPO), the LTB typically takes 90 days to resolve a dispute, which typically costs the landlord about \$5,200. This does not include lost time, administrative costs, and lost productivity.

This means a "professional tenant" can exploit judicial weaknesses to bill landlords up to a year's rent.

How to protect your rental income

So, what can you as a landlord do to protect your livelihood from poor-risk tenants and a costly and lengthy LTB tribunal process?

→ Avoid "poor-risk" and "professional" tenants.

Considering the average \$5,200 loss, it may be better for you 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.

→ Interview and qualify a candidate before renting to them.

This raises the bar of tenant qualification, slows rental uptake rates, and reduces vacancy rates which unfortunately means many more Ontarians will find it difficult to find housing.

→ Look for red flags during a face-to-face or phone interview.

This might include the candidate being overly-friendly or conversely, non-communicative or overly defensive. For lower-income rentals, a candidate who quickly points out that they already have the first and last months' rent could possibly be saying that they aren't going to pay their current landlord their due.

→ Ask candidates to, "Tell me something about yourself."

They may offer details that you can't lawfully ask. Ask them for seven years of rent and work history. Ask why they are leaving their present address. Note particularly topics

they appear to be skirting around, and get more details.

→ Get potential tenants to confirm before viewing.

Tell candidates that they must confirm with you by telephone their attendance, one hour before a scheduled tour, otherwise, you will not show up. This not only reduces time wasted with no-shows, but 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

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their willingness to follow up on what they commit to do.

→ **Conduct credit check on the spot.**
State in your advertising that credit checks will be performed and photo ID will be required. This will filter out some questionable tenants.

→ **Make the tenant liable for malicious damage.**
Draft (or buy) a strong rental application with supporting documentation so that

you have recourse if anything goes afloat later. This will also discourage tenants with malicious intent or who only care about themselves.

→ **Get up-to-date contact information from tenants.**

Your rental application should include emergency contact information and the applicant's current place of work. You can use this later if you have to serve notice or need 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.

→ **Clearly outline the tenant's responsibilities in the tenancy agreement.**

My rental agreement comprises three pages, but also has an additional three-page 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

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the RTA, such as landlord access to the unit, locks on doors, who pays for blocked toilets and pest eradication, use of parking space, and so on.

➔ **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.

➔ **Get credit checks done.**

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

➔ **Inspect, inspect, inspect.**

I tell every accepted tenant before they sign the rental agreement two very important points:

❶ 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.

❷ They have to 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. Multiple N4s also establish the tenant's rent payment pattern, which you will need in dealing with the LTB.

➔ **Ask for a guarantor if necessary.**

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



Record anything that you or the tenant feel should be noted such as burn marks on the carpet; take pictures, date them, and have your tenant sign the form and photos

diligence on them. Find out if the guarantor owns their home, the source of income that can guarantee the renter's rent, etc.

➔ **Conduct a moving-in inspection and record everything.**

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 including the smoke alarm, date the photos, and have your tenant sign the form

and the photos.

The move-in and move-out inspection documents can carry weight in a judicial proceeding, and is a strong deterrent against tenants trashing your unit if they move out because of a grievance. Perhaps most important of all, document everything! ■

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