



Tip Sheet for Tenants

HOW TO FILL OUT THE “MOTION TO SET ASIDE AN EX PARTE ORDER (S2)” FORM

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.

INTRODUCTION

This tip sheet will help you fill out the “Motion to Set Aside an *Ex Parte* Order” (S2) form. You need to fill out this form if you have received an *Ex Parte* Order for your eviction and you want to stop the eviction. The Landlord and Tenant Board (“Board”) issued the *Ex Parte* Order because your landlord claimed one of the following:

1. You and your landlord made an agreement that you are going to move out of your rental unit,
2. You gave your landlord notice that you are moving out of your rental unit,
3. You did not comply with a mediated agreement previously made at the Board which contained an RTA section 78 clause, or
4. You did not comply with an Order of the Board in which the Board Member included an RTA section 78 clause.

TIP FOR TENANTS: “*Ex Parte*” means without notice. A section 78 clause provides that if you do not comply with the agreement or order, then your landlord can file an application at the Board to evict you without giving you any notice of the application.

In all four situations your landlord must file an application at the Board. They must also file an affidavit (a sworn statement). Usually, your landlord will not have to notify or tell you that they have made this application. Usually, **no hearing is scheduled**. When the Board receives your landlord’s application the Board will (without a hearing) make an order

to evict you. The Board will mail the order to you. Your first opportunity to respond to your landlord's application is after you get the order, when you file a "Motion to Set Aside an Ex Parte Order".

I RECEIVED AN ORDER. WHAT SHOULD I DO NOW?

If you are not planning to move out by the eviction date in the order, then you must submit a "Motion to Set Aside an Ex Parte" at the Board. Please keep in mind these two things:

1. You have very little time to submit the Motion, and
2. The order may not tell you everything that your landlord said in their application.

WHEN MUST I FILL OUT A MOTION TO SET ASIDE AN EX PARTE ORDER?

You must submit to the Board the "Motion to Set Aside an Ex Parte Order" form within **10 calendar days** (including weekends and holidays) from the time that the order was "issued" (or written). You can get a copy of this form at the Board or online at www.LTB.gov.on.ca. You will find the date the order was issued on the left-hand side near the bottom of the order, close to where the Board Member's signature is located. The date is normally in **bold** print. If you submit the form in time the Board will schedule a hearing at which you can ask it to set aside the order.

TIP FOR TENANTS: If you miss this 10-day deadline, be sure to get legal advice before filling in the Request to Extend or Shorten Time" form.

If you miss the 10-day deadline, you will have to ask the Board for more time to file the Motion to Set Aside an Ex Parte Order. This request is done in writing using a "Request to Extend or Shorten Time" form. You can get a copy of this form at the Board or online at www.LTB.gov.on.ca.

See the Tenant Tip Sheet "How to Fill out the Request to Extend or shorten Time Form" and get legal advice from a community legal clinic or lawyer.

WHAT SHOULD I WRITE ON THE FORM?

To find out what your landlord said in their application, you must go to your nearest Board location and sign out the Board's file. In the file, you will find the landlord's application and affidavit.

There are two things you should say on your motion:

1. If you did not agree to move out, or give notice to move out, or fail to comply with a mediated agreement or order, then say so.
2. If you did any of the above, explain why the Board should either delay the eviction or refuse to evict you. Your reasons could include:
 - a. How your circumstances have changed since you agreed to move out or gave notice,
 - b. your personal, family, or work circumstances and why you need to keep your home, or
 - c. what you will do correct the breach of the mediated agreement or order.

If you submit your motion within 10 days of the date of the order, the Board will not base its decision solely upon what you say in your motion. What you say in the hearing is more important. As a result, in your motion just mention the important points. It is not necessary to go into a lot of detail.

If you submit your motion late, then what you say on the forms is much more important. The Board will only schedule a hearing if it is satisfied with what you said on your Motion and “Request to Extend or Shorten Time.” This is why it is important that you get legal advice from a lawyer or community legal clinic if you are submitting your motion late.

I HAVE FILLED OUT THE FORM. WHAT DO I DO NEXT?

Once you have filled in the Motion to Set Aside an Ex Parte Order, take it to the Board and give it to one of the people at the counter. This process is called “filing”.

The person at the counter will process your form and set a hearing date. She or he will give you three (3) copies of your form and three (3) copies of a Notice of Hearing (which tells you when your hearing will be held). One (1) copy is for you, one (1) is for your landlord and one (1) is for the Court Enforcement Office (the Sheriff).

HOW DO I STOP THE SHERIFF FROM LOCKING ME OUT?

When you ask for a set aside hearing, you get a “stay” on your order. A “stay” means that the order is frozen and that the Sheriff cannot lock you out. If you lose at your hearing, the Board will lift the stay and the Sheriff will be able to lock you out.

TIP FOR TENANTS: To make sure that the Sheriff does not lock you out before your hearing, **you must take one copy of your Notice of Hearing and Stay to the Sheriff’s office.** The Board will tell you the Sheriff’s address and phone number.

HOW DO I LET MY LANDLORD KNOW ABOUT MY SET ASIDE HEARING?

You must “serve” (give) your set aside documents to the landlord. Do this **as soon as possible** after filing your Motion to Set Aside an *Ex Parte* Order with the Board. See the **Checklist** for methods of service (at page 8).

HOW DO I PRESENT MY CASE AT THE HEARING?

The purpose of your hearing is to tell the Board why they should set aside the *Ex Parte* Order. What you say will depend upon what your landlord said in their application and affidavit.

If your landlord says that you agreed to move out or gave notice to move out you should speak about this:

- If you did not agree to move out or did not give notice, then tell this to the Board member. If your landlord shows a written agreement or notice and you did not sign it, tell this to the member. If you think you know why your landlord is trying to get you evicted from your home explain this too.
- If you did agree or gave notice to move out but cannot do so now, then explain why you cannot move out or have not moved out. If there are any special circumstances why you cannot move out or have not moved out, you should explain these too.

If your landlord says that you did not comply with a mediated agreement or a Board order, you should speak about this:

- If you did comply with the agreement or order, then say so. Explain how you complied. You should bring evidence with you to prove you complied (such as a receipt or a witness).
- If you did not comply but you want (or need) to stay in the rental unit, then you should explain your personal, family, or work circumstances and why you need to keep your home. If you can, you should also explain what you can do now to correct the breach of this agreement or order and try to convince the Board that it will not happen again.

TIP FOR TENANTS: You can also get the *Ex Parte* Order set aside if you can show that your landlord made certain kinds of procedural mistakes. You should get legal advice from a community legal clinic or lawyer to find out if your landlord made such a mistake.

WHAT WILL THE BOARD DO AFTER THE HEARING?

At the end of hearing, the Board will tell you his or her decision, or will “reserve” his or her decision so he or she can think about it some more. The Board will send to you a written copy of the decision in the mail.

WHAT DOES IT MEAN IF THE BOARD SETS ASIDE THE EVICTION ORDER?

If the Board sets aside the eviction order because the member agreed with you – that you did not agree or give notice to move out of your unit or, that you did not breach the agreement or order – then the order will be gone and you can continue to live in your home. You will not be evicted.

The Board could also set aside the order even if you did agree or give notice to leave, or even if you did breach the agreement or order, because the member thinks it would be the fair thing to do. Depending upon the circumstances, the Board could make a new order in which the eviction is delayed or subject to terms and conditions.

CAN I BE EVICTED IF THE BOARD DOES NOT SET ASIDE THE EVICTION ORDER?

Yes. If the Board believes that you agreed or gave notice to move out or that you did breach the mediated agreement or order, *and* the Board is satisfied that, having regard to all the circumstances, it would not be unfair to evict you, the Board will “dismiss” your motion. This means that the “stay” on the eviction order can be “lifted” or taken away and that the Sheriff can come and change your locks very quickly.

If your motion is dismissed, you will have to look at your options. You should contact your local community legal clinic for assistance in finding new housing. They may have a list of affordable apartments in your area.

If you already received a Notice to Vacate from the Sheriff, you should also plan to move all of your belongings out of your apartment as soon as possible. You will not get a new Notice to Vacate. Once the Sheriff changes the locks on your door, you will have only 72 hours to remove all of your belongings.

CAN I FIGHT THE BOARD’S ORDER?

It may be possible, in some circumstances, to fight the Board’s order through a Review and/or an Appeal. Get legal advice about this. There is a charge of \$50 for filing a review. The eviction order has to contain a “serious error” in order to be reviewable. There is information about filing a review in the tip sheet on **Reviews**. It is very important to get legal advice.

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 or 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

My Motion to Set Aside Hearing CHECKLIST

Use this Checklist to help you prepare your Motion to Set Aside an Ex Parte Order form, to serve your documents on your landlord and to prepare for your hearing. The Checklist gives you reasons, if they apply to you, why the Board should delay or stop your eviction.

Make sure that you bring whatever evidence you have (examples are in the Checklist) to your hearing. Start a file with whatever documents you have, or put them in an envelope and keep them in one place. In some cases, depending on how much evidence you have “on paper”; it will help to bring a witness to the hearing who can tell the Board what s/he knows about your situation.

STEP 1: HOW DO I FILL IN THE FORM?

File Number

This is the number on the top right hand corner of your eviction order

Landlord's Name

Fill in the landlord's name from the eviction order

Address of the Rental Unit

Fill in your address

Date of Order Section

I, *(insert your name)*, am asking the Landlord and Tenant Board to set aside the order dated *(insert the date that the eviction order was issued – usually found near the end of the order on the left-hand side of the page in **bold** print)* for the rental unit.

“Explain why you think the order should be set aside:”

In this box, you must explain the following:

If your Landlord says that you agreed or gave notice to move out, the Board will want to know from you if it is true. If you did agree or give notice to move out, but can no longer move out, you must explain why. If you never agreed to move out or you never gave notice to move out, you should state this on the Motion to Set Aside an *Ex Parte* Order and provide a reason why you think the landlord is trying to evict you.

If your landlord says that you did not comply with a mediated agreement or Board Order, the Board will want to know if it is true that you did not comply with the mediated agreement or Board Order. If you did comply with the agreement or order then you should state this. If you have breached the agreement but you want (or need) to stay in the rental unit or move out at a alter date you can explain your personal, family, or work circumstances and why you need to keep your home. If you can you should also explain what you can do now to correct the breach of this agreement and try to convince the Board that it will not happen again.

Signature area at the bottom of the page

Check off the box titled “tenant”

Insert your first and last name in the boxes provided.

Fill in your phone number with area code.

Lastly, you need to date and sign the form.

STEP 2: HOW DO I SERVE MY LANDLORD?

1. Pick one of the following ways to serve your landlord with the documents. Make sure to do this **at least 48 hours or 2 full days** before the set-aside hearing.
 - Hand a copy to the landlord.
 - Hand a copy to an “authorized employee of the landlord” (for example, the property manager or superintendent).
 - Leave a copy in the landlord’s mailbox.
 - Fax a copy to the landlord (bring the fax confirmation report to the hearing).
 - Courier a copy to the landlord’s address (give yourself an extra day for it to arrive).
 - Mail a copy to the landlord’s address (give yourself five [5] extra days for it to arrive).
2. Fill in the “Certificate of Service” form that the Board gave you when you filed the Motion to Set Aside an *Ex Parte* Order.
3. Bring the Certificate of Service with you to your hearing.

STEP 3: WHAT EVIDENCE CAN I BRING TO MY HEARING?

It will help you if you can bring **evidence** to the Board to prove your case. Evidence can be in the form of written documents – such as receipts or bank statements to prove a payment - or witnesses – such as a witness who was present when the “agreement” was supposedly made or when the “notice” was supposedly given or when a payment was made in compliance with a mediated agreement.