

## Tip Sheet for Tenants

# I am being evicted because I did not do what I agreed to do. What should I do now?

This tip sheet explains how to ask the Board to set aside an ex parte order for eviction.

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**This tip sheet contains general information.  
It is not a substitute for getting legal advice about your particular situation.**

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To download this and other tip sheets for tenants, go to <http://www.acto.ca>

An “order” is a document that shows the decision of the Landlord and Tenant Board, a special court that deals with conflicts between landlords and tenants. In this tip sheet “Board” means the Landlord and Tenant Board.

This tip sheet deals with a type of eviction order known as an “ex parte” order.

## What is an ex parte order?

Usually, you will get notice if your landlord wants to evict you. Your landlord applies to the Board on a form called **Application to evict a tenant for non-payment of rent and to collect rent the tenant owes** or an **Application to End a Tenancy and Evict a Tenant**. The Board then mails you a **Notice of Hearing** with a date for a hearing. You should receive the Notice of Hearing at least **10 days** before the hearing date.

But in certain situations, your landlord can ask the Board to order your eviction **without giving you notice** and **without a hearing**. This type of order is called an ex parte eviction order. “Ex parte” means “without notice”.

## When can I be evicted without a hearing?

The Board can make an ex parte order to evict you without notice or a hearing if your landlord reports that any of the following things happened:

- You and your landlord made an agreement that you would move out of the place you rent, but you did not move out.

- You gave your landlord notice that you would move out of the place you rent, but you did not move out.
- You and your landlord worked out an agreement with the help of a Board mediator, but you did not do what you agreed to do. In other words, you breached the mediated agreement.
- Your landlord applied to evict you in the past and the Board made an order allowing you to stay as long as you did certain things, but you have not done what you were expected to do.

## How can I stop the eviction?

You might only find out that your landlord has applied for an ex parte order to evict you when you get the order. To stop the eviction, you need to act quickly.

You must apply to the Board to “set aside” the order. You will need to fill in a form called **Motion to Set Aside an Ex Parte Order – Form S2** and give it to the Board. You must do this within **10 days** from the date of the ex parte eviction order. This is the date at the bottom of the last page of the order.

You can get the Motion to Set Aside an Ex Parte Order – Form S2 online from the Board’s website at [www.sjto.gov.on.ca/ltb](http://www.sjto.gov.on.ca/ltb), or you can pick it up at a Board office or at your local ServiceOntario Centre. The form is free.

The form asks you to explain why the eviction order should be set aside. To answer well, you need to know what information your landlord has given the Board. The ex parte order may not contain everything your landlord put in the eviction application. You should look at the landlord’s application and affidavit in

your Landlord and Tenant case file. An affidavit is a written statement made by someone who swears that it is true by signing in front of a witness. In this case, the affidavit is a sworn statement with details of what your landlord says you did or did not do. It supports the landlord's application to evict you.

You can go to the nearest Board office and ask to see your file. You will need to give them your name, the Board file number, and some photo identification. If you cannot get to a Board office, contact your local legal clinic for help. At the end of this tip sheet there is information about how to find the legal clinic for your area.

## What if I miss the deadline to apply to set aside the order?

If you miss this 10-day deadline, you will need to ask for more time using a form called **Request to Extend or Shorten Time**. This request is free. You can get the form online at [www.sjto.gov.on.ca/ltb](http://www.sjto.gov.on.ca/ltb), from a Board office, or a ServiceOntario Centre. Keep reading to find out about another tip sheet that explains how to fill in this request form.

In the request form, explain why you missed the 10-day time limit. Give the request form to the Board together with your completed Motion to Set Aside an Ex Parte Order – Form S2.

If you apply to set aside the ex parte eviction order after the 10-day deadline, it is very important to include as much information as possible in the Motion to Set Aside an Ex Parte Order – Form S2 to show the Board member that you have a case. If possible, include proof of what you say. For example, if you did not follow the mediated agreement to make payments to the landlord because you lost your

job, but now you have a new job and can make all the payments you agreed to, attach a copy of a recent pay stub.

If the Board does not grant your request to extend the deadline, your Motion to Set Aside an Ex Parte Order will not be accepted. This could be the end of the eviction process at the Board and the Sheriff can come and lock you out.

You get only one chance to ask for an extension of time, so you should get legal advice before completing the form. At the end of this tip sheet there is information about where to get legal help.

## What should I say when I fill in the Motion to Set Aside?

If you followed your mediated agreement or order, did not agree to move out, or did not give notice to move out, you need to say this in the Motion to Set Aside.

If you did not follow your mediated agreement or order, agreed to move out, or gave notice to move out, you will need to explain why the Board should not evict you or should delay your eviction. Your reasons could include:

- how your circumstances have changed since you agreed to move out or gave notice,
- your personal, family, or work circumstances and why you need to keep your home, or
- what you will do to correct the breach of the mediated agreement or order.

On the page called **Request for Accommodation or French Language**

**Services:**

- If you want your hearing to be in French, check the box marked "French-Language Services".
- If you have special needs, you can use this page to tell the Board what kind of help you need. If your special needs are related to grounds listed in the Ontario Human Rights Code, the Board must make special arrangements to help you use the Board's services. For example, if you are not from Canada and have difficulty speaking or understanding English or French, you can ask the Board to provide an interpreter to help you participate in your hearing. Or, if you have a physical or mental disability that may affect your use of the Board's services, you can ask the Board for special assistance.

Once you have filled in your form and attached proof, hand it in to the staff at the front counter of the Board or a ServiceOntario Centre. This is called "filing a Motion to Set Aside an Ex Parte Order".

## What happens next?

A Board member will look at your Motion and decide when to have a set-aside hearing. If you file your Motion at the Board, you can wait for the Board member's decision or you can ask for the decision to be sent to you by mail. If you file at a ServiceOntario Centre, the decision will be sent to you by mail.

In most cases, the Board will mail you and the landlord a package containing a **Notice of Hearing** and a copy of your application, but sometimes the Board will direct you to give the papers to your landlord.

If you need to deliver the documents, the Board will give you an **Order to Serve Documents**, 3 copies of the Notice of Hearing showing the date of the set-aside hearing, and a **Certificate of Service**.

You are responsible for giving out the copies as follows:

1. You **must** deliver a copy of the Notice of Hearing to the Sheriff so that they do not come to lock you out. The Notice lets the Sheriff's office know that there is a "stay" on the eviction. A stay puts the eviction on hold until the Board makes a decision. Without a stay, the Sheriff can come to lock you out.
2. If the Board directs you to give the papers to your landlord, you **must** give your landlord a copy of the Notice of Hearing **no later than** the deadline that is listed in the Order to Serve Documents.
3. Keep one copy for your own records.

After you give the papers to your landlord, you must fill in the **Certificate of Service** and give it to the Board.

You must go to the hearing. Your landlord is also expected to be there.

## What can I expect at the set-aside hearing?

At the set-aside hearing, a Board member will listen to you and your landlord. Based on your evidence and your landlord's evidence, the Board will decide whether the ex parte eviction order should be set aside. Keep reading to find out what evidence is.

The Board member may give you a decision at the end of the hearing or may take more time to decide. The Board will send you a written copy of the decision in the mail.

## What should I say at the hearing?

What you say at the hearing will depend upon what is in the landlord's application and affidavit. The Board keeps these documents in your Landlord and Tenant case file. You can go to the nearest Board office and ask to see your file. You will need to give them your name, the Board file number, and some photo identification. If you cannot get to a Board office, contact your local legal clinic for help. At the end of this tip sheet there is information about how to find the legal clinic for your area.

### **1. Did your landlord say that you agreed to move out or gave notice that you would move out?**

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 but 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.

**2. Did your landlord say that you did not comply with a mediated agreement or a Board order – in other words, that you did not do what you were expected to do?**

If you did comply with the agreement or order, then say so. Explain how you complied. Bring evidence, such as a receipt or a witness, to prove you complied.

If you did not comply but you want to stay in the place you rent, then you should say why you need to keep your home. Explain how your personal, family, or work circumstances would be harmed if you had to move.

If you can, you should also explain what you can do now to correct the breach of the agreement or order. Try to convince the Board that it will not happen again.

**3. Is there any reason why your eviction should be delayed or refused?**

The Board can order that your eviction be delayed or even refused.

Reasons for delay or refusal can include **any** of the following:

- you have small children,
- you have a mental or physical disability,
- you need more time to pay the rent you owe,
- you are a single parent, or
- you live in subsidized housing.

Tell the Board why the eviction should be delayed or refused. If you need more time to pay the rent you owe, tell the Board why. If you have a payment plan ready, give the Board a copy.

The Board member could set aside the ex parte eviction order even if you did agree to move, or even if you did breach the agreement or order, if this is what the member thinks would be the fair thing to do.

## What is evidence?

Evidence is what you, your landlord, and your witnesses say at the hearing.

Evidence is also any documents that you or your landlord give to the Board.

Here are some examples of different kinds of evidence:

- ✓ photographs and videos,
- ✓ letters, e-mails, or texts,
- ✓ invoices and receipts,
- ✓ bank statements,
- ✓ medical records,
- ✓ report from a building inspector, and

- ✓ witnesses, for example, family, friends, social worker, police officer, building inspector.

You must bring **3 copies** of any documents you want to use at your hearing. One copy is for you, one for your landlord, and one for the Board member who is hearing your case.

If your evidence is a photo or other still image on a camera, a phone, or a computer, make sure you print copies to bring to the Board. If your evidence is a video- or sound-recording on a computer disc, contact the Board in advance to ask for a computer to be available at the hearing or bring your own laptop computer, so that you will be able to show what is on the disc.

Usually, the police, building inspectors, and other officials cannot go to a hearing as witnesses unless they are “summonsed”. For information about how to summons a witness, contact the Board or your local community legal clinic.

You will find contact information for the Board and community legal clinics at the end of this tip sheet.

## What if the Board sets aside the order?

If the Board decides to set aside the ex parte eviction order, the Board may:

- cancel the eviction order,
- replace the eviction order with a new order that postpones your eviction to a later date, or

- replace the eviction order with a new order that outlines things you must do to avoid eviction.

## What if the Board does not set aside the order?

If the Board decides not to set aside the ex parte eviction order, the Board will dismiss your Motion. The stay on the eviction order will end and the Sheriff can now come and lock you out.

## Can I challenge the Board's decision?

If you believe the Board made a serious error in making its decision, you can apply to the Board to review the decision not to set aside the ex parte eviction order. In other words, you can ask the Board to look at your case one more time.

To request a review, complete a **Request to Review an Order** form and give it to the Board within **30 days** from the date of the decision. It costs \$55 to file this request. You may not have to pay the \$55 to file your request if you qualify for a fee waiver. To find out whether you qualify, you must fill out a form called **Fee Waiver Request** and give it to the Board with your Request to Review an Order.

You can get both the Request to Review an Order form and the Fee Waiver Request form from the Board or a ServiceOntario Centre. These forms are also available to download from the Board's website at [www.sjto.gov.on.ca/lrb](http://www.sjto.gov.on.ca/lrb).

You get only one chance to ask for a review of the ex parte eviction order, so you should get legal advice before completing the form. At the end of this tip sheet there is information about where to get legal help.

If you believe there is an **error of law** in the Board's decision, you have the right to appeal to the Divisional Court. You have **30 days** from the date of the Board's decision to do this. Going to Divisional Court can be very expensive. If you lose, you could be made to pay your landlord's legal costs. That could be thousands of dollars.

Get legal advice before going to court.

## Where can I get help or more information?

### Tip sheets for tenants

If you missed the deadline to file the Motion to Set Aside an Ex Parte Order – Form S2, see the tip sheet called *What should I do if I am late to file a form with the Board or if I need a hearing quickly?*

To find out more about payment plans, see the tip sheet called “My landlord wants to evict me because I owe rent.”

Are there mistakes in the Board's decision? If so, you will find more information in the tip sheet called “I think my order from the Board is wrong. What should I do?” These and other tip sheets for tenants are available online at [www.acto.ca](http://www.acto.ca)

### Community legal clinics

Across Ontario, legal clinics give free legal advice to people with low incomes. Contact your local community legal clinic for help with landlord and tenant matters.

To find the community legal clinic for your area, go to Legal Aid Ontario's website at [www.legalaid.on.ca](http://www.legalaid.on.ca). Click on "Contact LAO" then on "Community legal clinics". Or call Legal Aid Ontario:

Toll-free. .... 1-800-668-8258  
Toronto area..... 416-979-1446  
Toll-free TTY..... 1-866-641-8867  
TTY, Toronto area. .... 416-598-8867

**Other sources of information**

You can find information for tenants online at [www.yourlegalrights.on.ca](http://www.yourlegalrights.on.ca) and at [www.stepstojustice.ca](http://www.stepstojustice.ca).

In Toronto, you can also call the Tenant Hotline at 416-921-9494 for free information and referrals to your local legal clinic.