

Due to the pandemic, the Landlord and Tenant Board has switched in-person hearings to digital hearings, held over Zoom. For more information on digital hearings please see the following guide: <https://www.acto.ca/documents/remotehearings/> Until further notice, reference to in-person hearings should be replaced with digital hearings.

The Board is making changes to how they deliver services, including how to file an application and disclose evidence. Thus, it is always important to carefully read the information that has been provided to you by the Board and to follow those instructions. Updates can also be found on the Board's website at tribunalsontario.ca/lrb/.

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.**

Prepared by the Tenant Duty Counsel Program and funded by Legal Aid Ontario.
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 tribunal 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?

If your landlord wants to terminate your tenancy, in most cases they have to first give you a notice to terminate your tenancy. Second, your landlord has to fill out an application to terminate your tenancy and send it to the Board. The Board will process the application and send you a hearing package, including a copy of the Application and a Notice of Hearing. The Notice of Hearing will state the date, time and location of your hearing.

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 or consent order.
- 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.
- You have entered into a payment plan with your landlord that is unaffordable, and includes a section 78 clause that permits your landlord to seek an eviction order without a hearing or without notice if you breach the payment plan.

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 a [Motion to Set Aside an Ex Parte Order – Form S2](#) and send it to the Board. You must do this within **10 calendar days** from the date of the ex parte eviction order. This is the date at the bottom of the last page of the order.

Because the Form S2 is very time sensitive, **the fastest way to send the completed Form S2 to the Board is by email**. In the Subject line of the email, please write “URGENT” and please write your file number.

Email the LTB Regional Office that is responsible for your file. To find a list of email addresses for each of the LTB office locations, visit the Contact the LTB page at www.tribunalsontario.ca/ltb.

You do **not** have to pay a fee to file the S2 Form.

You may also drop off your completed form(s) at a ServiceOntario Centre. Contact them first to see if they accept LTB forms.

The form asks you to explain why the eviction order should be set aside. To answer accurately, 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 declaration in your Landlord and Tenant case file. A declaration is a statement with details of what your landlord says you did or did not do. It supports the landlord’s application to evict you.

One way to get a copy of the documents is to [contact the Board](#) and ask them to send you a copy. Another way to try to get a copy is to ask your landlord.

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 and should be sent to the Board along with your Form S2.

In the request form, explain why you missed the 10 day time limit. Send the request form to the Board together with your 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 to show the Board member that you have a case. If possible, include evidence of what you say.

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 legal 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 an explanation of:

- 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.

If you want your hearing to be in French, or if you have special needs related to grounds listed in the Ontario Human Rights Code, the Board must make special arrangements to help you use the Board's services. You can make a [Request for French Language Services or Accommodation](#).

What happens next?

If you file your Form S2 within 10 days from the date of the order, the Board will give you a hearing.

If you filed after the 10 day deadline, a Board member will look at your Form S2 and your Extension of Time Request and decide whether to grant your extension of time request and give you a hearing. You should be notified by mail or by email. If you do not hear from the Board within a few days, you should contact them to find out the status of your application.

If your extension request is granted, the Board will send you and your landlord a package containing a **Notice of Hearing** and a copy of your Form S2.

In some cases, the Board will ask you to give the papers to your landlord instead. The Board will tell you what documents you are responsible for giving to your landlord and when you must give them. Deliver the documents as soon as possible, **but no later than the deadline. If you do not follow the instructions, the Board may delay your hearing or not hear you at all.** After you have delivered the documents, fill in the **Certificate of Service** and send it to the Board.

You **must** deliver a copy of the Notice of Hearing and Form S2 to the Sheriff so that they do not come to lock you out. The documents let 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.

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 or by email.

What should I say at the hearing?

At the hearing, you need to explain your side of the story, in as much detail as you can. You have to tell the truth at your hearing. Below are some common scenarios.

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 Board 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. Show evidence, such as a receipt, to prove you complied.

If you did not comply but you want to stay in your home, 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, let the Board know.

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 Board 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 send your evidence to the Board along with your Form T2. Since the Board does not provide a copy of your evidence to your landlord, you will need to send your evidence to your landlord. Normally you have to disclose your evidence to your landlord at least 7 days before your hearing, but there are important exceptions, so please read and follow any instructions provided by the Board. You can also look at the Board's website for more information.

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? Can I challenge the Board's decision?

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 calendar days** from the date of the decision. It costs \$58 to file this request. You may not have to pay the \$58 filing fee if you qualify for a [fee waiver](#).

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

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. 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 and at 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.