



Digital Evictions

The Landlord and Tenant Board's experiment in online hearings



Advocacy Centre
for Tenants Ontario | Tenant Duty
Counsel Program

A Serious Question of Access to Justice

In March 2020, the Landlord and Tenant Board shifted from in-person hearings to online hearings. In this shift, little to no effort has been made to accommodate tenants with mental health issues, who are illiterate or innumerate, or who do not have English as their first language. This is compounded by the fact many low income and rural or remote households lack access to reliable internet and phone services. In short, many tenants lack access to justice. Tribunals Ontario's recent announcement that they will continue with a digital first strategy post pandemic is cause for grave concern.¹

The Digital Divide

Lower income households have reduced access to internet service. Data from the Canadian Radio-television and Telecommunications Commission (CRTC) show that 98.5% of households in the highest income quintile had a home Internet subscription compared to 69% of households in the lowest income quintile². There was a similar difference in ownership of home computers, with 95% of households in the highest income quintile having a home computer compared to only 63.4% of households in the lowest income quintile. These disparities are more likely to affect tenants, since tenant households tend to have lower incomes than homeowners. Almost half of tenant households in Ontario have annual incomes below \$40,000.

CRTC standards establish that Internet connections should have access to broadband speeds of at least 50 Mbps download and 10 Mbps upload, and access to unlimited data. High-speed internet access is essential to fully participate in online work and services, including access to digital hearings. The CRTC standard is accessible to 87.4% of Canadians, nearly 99% of urban households but only 45.6% of households in rural communities.³

1 See Section Five, https://tribunalsontario.ca/documents/TO/TO_2020.21%20%E2%80%93%202022.23_Business_Plan_EN.html

2 The Canadian Radio-television and Telecommunications Commission. Communications Monitoring Report 2019. <https://crtc.gc.ca/pubs/cm2019-en.pdf>. The first quintile is defined as annual household income below \$32,914, the fifth quintile as annual household income above \$132,809

3 Broadband Access in Rural Canada: the role of connectivity in creating vibrant communities. (2014). Federation of Canadian Municipalities.

A recent report on the digital divide in Toronto showcased similar findings⁴. Across the city, 38% of all households, 52% of low-income households, and 48% of those aged 60 and older reported download speeds below the CRTC's national target of 50Mbps. The monthly cost of internet service was the most mentioned reason (49%) among Toronto households that do not have access to the internet at home. Three out of four households with incomes under \$30,000 per year who did not have home internet cited the monthly cost as a barrier.

According to the Canadian Internet Use Survey (CIUS),⁵ lower income households also have a lower rate of smartphone ownership. Eighty three percent of households in the lowest income quartile in Ontario have a smartphone for personal use compared to 94% of households in the highest income quartile.⁶ The CIUS also found differences in the use of technology, reflecting different levels of access and comfort with online services. Seventy five percent of households in the lowest income quartile shopped online compared to 93% of households in the highest income quartile. And 62.4% of households in the lowest income quartile used government services online compared to 83% of households in the highest income quartile.⁷

Experiences at the Landlord and Tenant Board

Surveys of digital hearings were conducted across the province from March-May 2021.

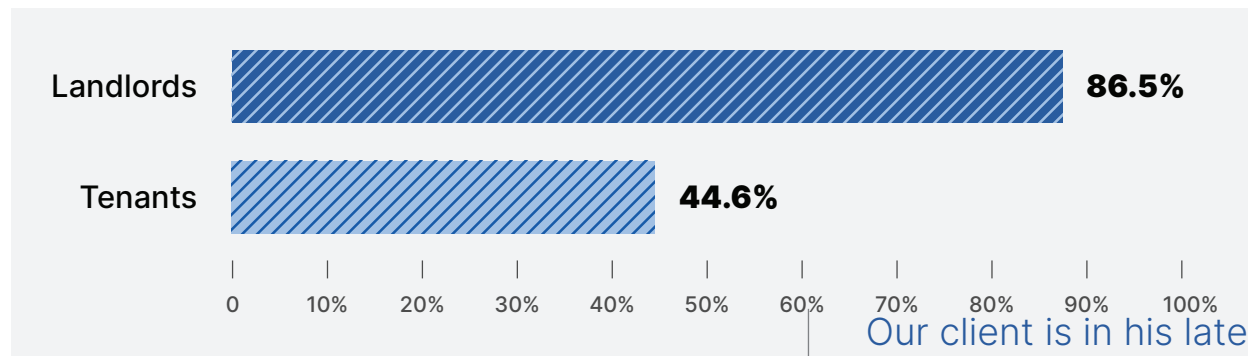
The majority of landlords are present at hearings, the majority of tenants are not

4 Andrey, S., Masoodi, M.J., Malli, N., & Dorkenoo, S. (2021, January). Mapping Toronto's Digital Divide. Ryerson Leadership Lab and Brookfield Institute for Innovation + Entrepreneurship. https://brookfieldinstitute.ca/wp-content/uploads/TorontoDigitalDivide_Report_Feb2021.pdf

5 Statistics Canada. Table 22-10-0113-01 Use of Internet services and technologies by age group and household income quartile

6 The lowest quartile is defined as annual household income less than or equal to \$40,000, and the highest quartile as annual household income \$125,000 or higher

7 Statistics Canada. Table 22-10-0113-01 Use of Internet services and technologies by age group and household income quartile



Tenants were present for less than half of the hearings observed (44.6%). In contrast, the landlord or a representative was present for the vast majority of hearings observed (86.5%). Ontario’s digital divide means that many low income tenants do not have access to appropriate technology or the ability to use it. A smaller percentage of tenants are attending digital hearings compared to when hearings were held in person. And this much is clear: a tenant’s inability to participate in a hearing has potentially dire consequences - the loss of their home.

Even if they have access to the technology, some tenants do not understand how to access the virtual hearings. A community clinic lawyer shared one experience- “Our client is in his late 70s and is undergoing treatment for cancer. His medication causes some memory/comprehension issues so he struggled with understanding and using the technology. He was confused about how to call into the hearing but tried calling in anyway, unfortunately he did not understand the passcode he needed was on the Notice of Hearing. He was facing eviction for owing one month’s rent – our office was not retained at this time. After trying to join multiple times he called the LTB’s mainline, he called around 30 times, he was not able to reach a person either waiting on hold or having the call disconnect right away because the lines were too busy. He then came to our office and we were able to file a review request on the basis that he was not reasonably able to participate.”

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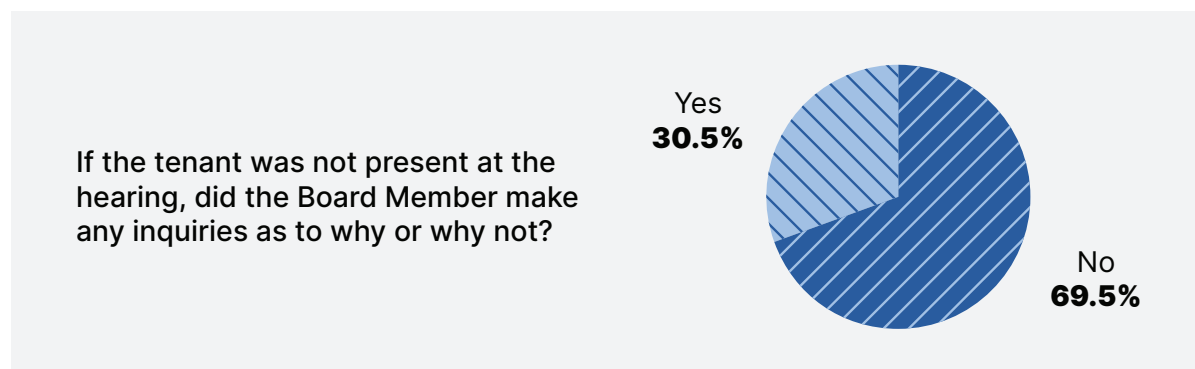
Other tenants could not join or were cut off from the hearing because of limited phone and internet access. A tenant duty counsel (TDC) lawyer shared an example -- “A tenant called into the hearing block and requested to speak to tenant duty counsel. However, she vanished from the virtual hearing room. I am not sure if she was having technical difficulties or whether she

was muted, but I never got a chance to talk with her. After calling this tenant’s name several times (with no response), the Board Member proceeded to conduct this hearing in her absence.”

Another TDC lawyer told of a hearing where the tenant called using the neighbour’s phone since they no longer had a phone or internet after income losses related to the Covid pandemic. The tenant offered a payment plan for arrears but the call got disconnected while it was being discussed. When the tenant did not call back, a standard eviction order was issued and the tenant was deemed a “no show”. As these examples illustrate, there are very severe consequences for tenants experiencing technological challenges.

For tenants who have limited experience with virtual hearings, the entire process is new and confusing. As one TDC lawyer explained—“Sometimes I have to wait 15-20 minutes to be admitted to a hearing. I am used to this unfortunately, but a tenant may not know to wait this long - they may hang up, try to call the LTB and then miss the hearing altogether.” Tenants may also be confused as to the nature of the hearing. Another lawyer explained that the LTB conducts multiple hearing blocks, which isn’t clearly explained in the hearing notice. This means tenants may be expecting an individual hearing and don’t realize there are multiple hearings at once. When they call in and hear other proceedings they may assume that they are in the wrong call and hang up.

Board Members rarely ask why tenants are absent from hearings



When tenants are not present at the hearing, Board Members rarely ask why. The Landlord and Tenant Board has been advised that fewer tenants attend digital hearings than previously attended in-person hearings. Given the grave consequences for tenants and the implications for access to justice, the Board needs to establish why tenants are not present at hearings or are disappearing from them midway, and provide them with feasible alternatives. Board members should be asking some key questions at the hearings-- Does the tenant have access to appropriate technology? Were tenants aware of the hearing? Does the tenant have any mental health issues? Are they illiterate or innumerate? Do they have English as their first language? Is there any other reason why the tenant might be absent?

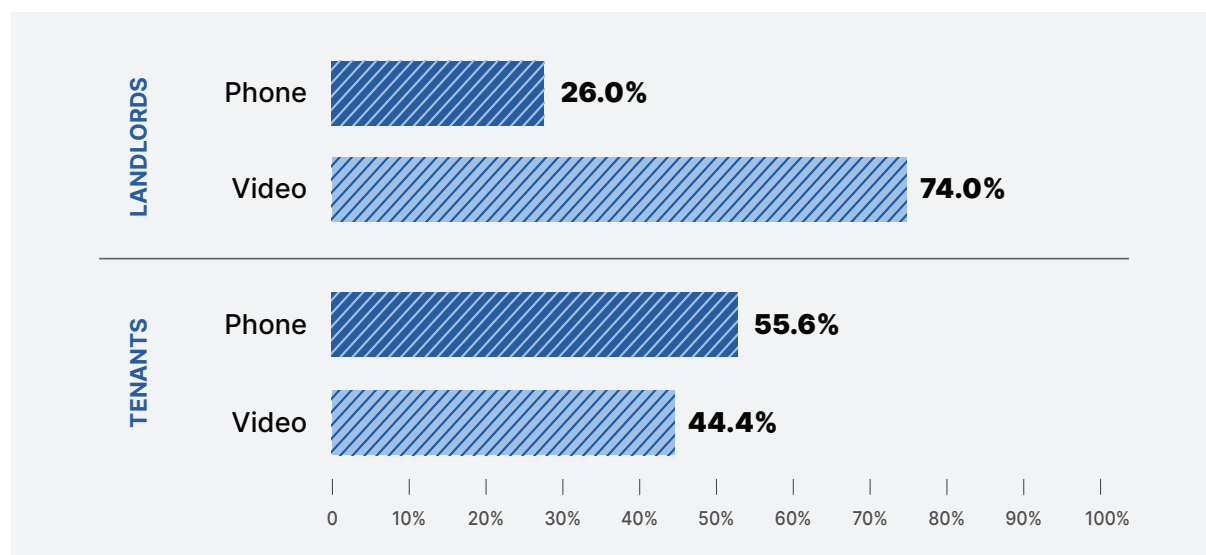
The Landlord and Tenant Board should also make greater efforts to accommodate tenants

with barriers to participation. It is noteworthy that the hearing observations revealed a glaring absence of tenants with mental health disabilities, tenants who are illiterate or innumerate, and tenants who do not have English as their first language. This is in direct contrast to TDC and community clinics' experience with in-person hearings.

As a result of technological or access issues, tenants with physical disabilities have had particular challenges navigating the remote hearings. A TDC lawyer shared an experience with a tenant who is deaf as an example of the complications faced by tenants with disabilities during virtual hearings-- "The ASL interpreter was on Teams but in a different video, and couldn't see the tenant to provide proper interpretation. Eventually the video was pinned, but the tenant couldn't get legal advice over Teams as we couldn't provide advice over the phone. The LTB member was able to transfer everyone to Zoom so that TDC could advise the tenant in a breakout room. Tenant and landlord negotiated a settlement but just as parties were about to do a consent, the interpreter ran out of time. Thankfully he was willing to stay on. It was messy. If it wasn't for the Board Member moving the hearing to Zoom and if it wasn't for the fact that the tenant had advocates present who could hear and understand the proceedings, it could have gone really badly for the tenant."

A community clinic lawyer shared another experience regarding a client with hearing difficulties—"The Board Member yelled at, berated and threatened contempt against my elderly client who is hard of hearing and reliant on a rotary dial phone, when he unintentionally kept interrupting during his announcements when he intended on advising that he was in attendance. The Board Member did not explain patiently and loudly enough what was taking place and he demanded my client to mute his phone but he does not know what "mute" is and he did not have this function as he was using a rotary dial phone."

The majority of landlords participate by video, the majority of tenants are on the phone



There were also significant differences in the mode of participation in hearings. Tenants most often participated by phone instead of video; landlords or their representatives most often participated by video. This could be the result of limitations in access to technology by tenants, who are less likely to have the high speed internet and/or the hardware necessary to join video calls.

There are significant drawbacks to participation by phone when others are on video. Those participating by video can see what is happening in the virtual hearing, including evidence shared on the screen. By contrast, when participating by phone, there are no visual clues. It is very difficult to discern what is happening, including whether you are in a virtual lobby or a hearing room. When all parties are on camera, there is a more human connection. Participants on the phone cannot see the landlord or the Board Member and they cannot be seen. They are a disembodied voice that has to argue for their home from a disembodied place.

A TDC lawyer explained the challenge for tenants-- “a consistent issue that has come up is the inequity for those who join a hearing block via phone, rather than computer. There is a lack of information for those joining by phone that is not compensated for by Board Members. Without the visual cues in Zoom or Teams, it is difficult to gauge what is actually going on. For example, members often reference ‘renaming’ people in the hearing block, which is not clear without being able to see what is going on. There is not a visual indicator if they are muted, and Board Members often get angry/frustrated at those who are not muted. Those who phone in cannot see what room they are in - the main room, a breakout room, or the hearing room, and it is often not made clear.”

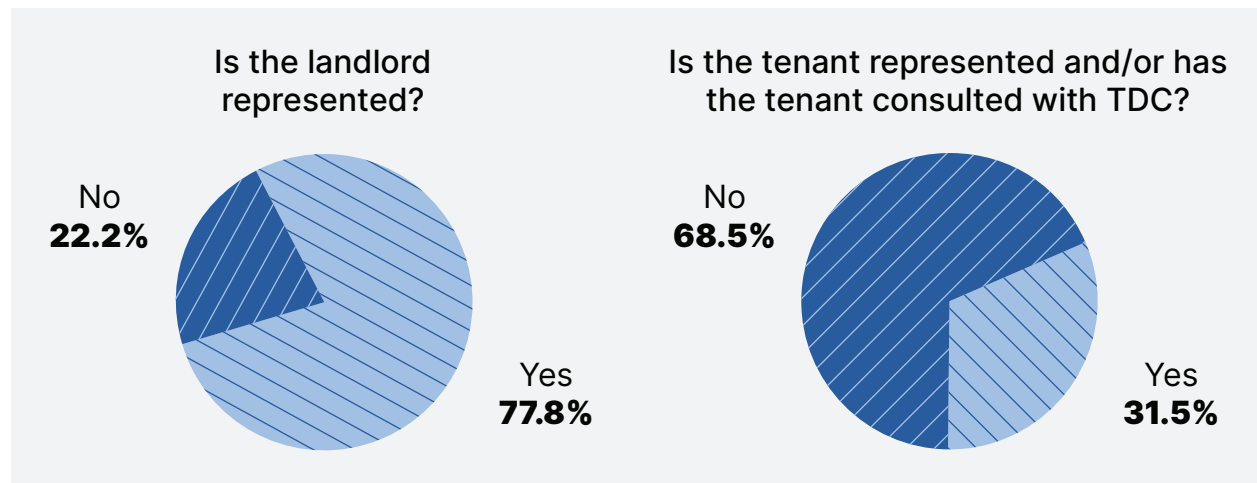
An Indigenous legal worker made the following observations – “The experiences with my clients and the video hearings have not been positive and have added more hurdles to overcome. Many clients do not have devices to be able to attend a video hearing or know how to operate and navigate the device and internet. Clients have experienced difficulty with calling in on the phone, entering the passwords... If a client does have access to a device and internet and able to navigate themselves to the video hearing, they keep their video off the entire time. I have only had two clients appear by video... There are tenants who are survivors of sexual abuse and being on camera is triggering, forcing them to participate by telephone. The

The tenant owes rent because she lost her job due to COVID. She asks if the landlord is willing to agree to a repayment plan. The landlord says no. The tenant begins to weep, saying that it's all hopeless, that she is going to lose her home, and that she may as well hang up. The moderator does not respond. The tenant disconnects. Would the outcome have been different had she been on video? Quite possibly.

landlord, their representative and witnesses have all appeared by video.”

A legal clinic lawyer shared an experience where they believed a more human connection could have made a difference-- “Tenant is on the phone. Landlord representative is on video. Tenant thinks she is in the hearing room. In fact she is in the virtual lobby. When her case file is called by the moderator, the tenant begins to explain her circumstances. She says that she owes rent because she lost her job due to COVID. She asks if the landlord is willing to agree to a repayment plan. The landlord says no. The tenant begins to weep, saying that it’s all hopeless, that she is going to lose her home, and that she may as well hang up. The moderator does not respond. The tenant disconnects. Would the outcome have been different had she been on video? Quite possibly.”

The majority of landlords are represented at their hearing, but few tenants received legal advice or were represented at their hearings



Landlords had legal representation for most of the hearings observed, most often by a paralegal or a lawyer. Even when tenants were able to participate in hearings, they overwhelmingly did so without the benefit of legal advice or representation. In over two thirds of the hearings observed, tenants who participated in the hearing were not represented or had not benefited from advice from TDC.

Legal representatives are familiar with the rules of proceedings, how to frame issues in a legal manner and what evidence to submit. When landlords are legally represented and tenants have no representation or advice, the scales are tipped against the unrepresented tenant. And this is occurring in a context where tenants, especially low income tenants, fear becoming homeless, losing their children, and disrupting their work, school and neighbourhood lives.

Tenant duty counsel have reported greater difficulties providing advice during virtual hearings compared to in-person hearings. A TDC lawyer explained some of the difficulties in providing legal advice in a virtual setting, including the reality that tenants may be reluctant to provide

their phone numbers publicly-- “A tenant declined legal advice over Teams. I found out later this was because she did not feel comfortable disclosing her phone number to the landlord. Getting legal advice over the phone requires a lot of trust on the part of the tenant. Many vulnerable tenants do not trust a disembodied voice. In person they would have seen the confidential office space and understood a little more that they didn’t have to disclose their personal info to a landlord.”

Another lawyer shared an example of the technical challenges of virtual hearings-- “Tenant requested legal advice. I could not advise over the phone in a Teams hearing whether or not there were problems with the application under the time constraint...If we were in person I could have looked at the application and given legal advice.”

Virtual hearings mean tenants need not only access to the appropriate technology but a space from which to call into the hearing with a reasonable level of privacy. Another TDC lawyer shared a situation where the landlord and tenant lived in the same house; the tenant requested duty counsel advice but explained that the landlord was upstairs at the moment and could hear everything. In this case, the tenant left his apartment and went outdoors to be able to receive advice from duty counsel.

Conclusion

There is no doubt that digital hearings have seriously compromised access to justice for low income tenants. Tenants with mental health issues, who do not have English as their first language, or who are illiterate or innumerate, are noticeably absent from the proceedings. Many low income tenants lack adequate internet and phone access. In light of this reality, it is alarming that Tribunals Ontario is intent on pursuing a digital first strategy post-pandemic. In-person hearings must be the default, with digital hearings an option where appropriate.

Tenants require real access to justice. There are few more devastating consequences than the loss of one’s home.