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Dawn Sullivan
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Sent via e-mail

Dear Mr. Weir, Mr. Gousopoulos, Ms. Sullivan, Ms. Gamsa and Ms. Bridgewater:

Re: Scheduling, urgent tenant filings and interim orders, Tribunals Ontario Portal

The Legal Clinic Housing Issues Committee (LCHIC) is a province-wide group of legal workers who assist low-income tenants through Ontario's community legal clinics. We wrote last year after Tribunals Ontario first demonstrated the Portal to express a number of concerns we had about the Portal and your decision to stop the use of fax. Thank you for taking some of these into consideration in implementing related changes to the LTB Rules of Procedure and maintaining fax as a filing option.

We continue to have serious reservations about certain aspects of the Portal and serious doubts about the effectiveness of the LTB's remote/digital operations. In light of recent stakeholder memoranda and announcements by Executive Chair Weir, we are taking the opportunity to outline some priority areas that the LTB must address in order to carry out its mandate of adjudicating disputes expeditiously and fairly. Failing to address these problems risks rendering RTA rights meaningless for many of the parties who most need the Act's protection.

We wish to provide the following priority recommendations:

Scheduling

1. In its push to process the oldest applications in the system, **the LTB must ensure that parties receive adequate notice of hearings.** (At least 20 days notice is required in non-urgent matters given advance disclosure requirements. Additional notice should be given for hearings in non-urgent matters that have been in the system beyond one year, as it may be even more difficult for parties to locate witnesses and evidence.)

Legal clinics have recently encountered applications being scheduled on less than 10 days notice in matters where the only issue is money owing and there is no urgency to justify a hearing on short notice. Such inattention in scheduling will lead to further adjournments and further delays.

2. **Clearing the LTB's backlog must not take priority over the scheduling of urgent matters** including applications, motions and requests where an evicted tenant is seeking an order for possession or a sitting tenant is seeking orders to enforce their right to safe, healthy housing (e.g. repairs, vital services, harassment). The processing and scheduling of such matters needs to reflect the gravity of tenants' circumstances, which may become more dire with each day, while affording sufficient flexibility to ensure parties are able to serve and file documents and prepare for their hearings.

We were encouraged to learn from the Ontario Ombudsman's 2021-2022 annual report that the LTB had instituted a dedicated team to process urgent hearing requests.¹ However, we are concerned about the effectiveness of this team given recent experiences. For example, tenants locked out of their homes have faced waits of two months or more for hearings to seek orders to be restored to possession. Tenants have at times faced longer wait times – including waiting months just to obtain a file number, without any hearing date – where urgent repairs were necessary to regain access to vital services (e.g. water, heat).

It would be beneficial for the LTB to publish clear guidelines on what types of matters are considered to be urgent, including information on how to identify a matter as urgent, both via the Portal and other filing methods.

3. **The LTB should not schedule an evening or weekend hearing unless all parties jointly request one.** Further, conducting such hearings on consent should be a temporary measure to address the LTB's current backlog.

Evening or weekend adjudication should generally be limited to considering *ex parte* (i.e. not involving hearings) requests and motions that require immediate decisions because Sheriff enforcement is imminent.

¹ Office of the Ombudsman of Ontario, *Annual Report 2021-2022* (August 2022), [p. 54](#).

Adjudicators' hearing time should be focused in a way that allows timely hearings to be scheduled during business hours. Time spent hearing matters on evenings and weekends adds to adjudicators' already heavy responsibilities and may take away from their writing time. Like the LTB, legal clinics have limited staffing and limited funding, and there are practical (e.g. availability of office space to staff and clients) and legal (e.g. obligations under labour and employment law) barriers to their participation in evening and weekend hearings.

Inappropriate scheduling of matters on evenings and weekends may also increase the volume of adjournment requests and exacerbate delays rather than having the desired effect of improving the LTB's processing times and reducing its backlog of pending cases. Respectfully, the LTB should focus its efforts on improving the accessibility, timeliness and fairness of its hearings during regular business hours.

Urgent tenant filings and interim orders

4. If the LTB is unable to quickly schedule a full hearing on the merits² of a tenant's application, request or motion and the matter is urgent, **the LTB should have a clear, accessible, expeditious process for:**
 - **tenants to request and obtain appropriate interim remedies** pending a disposition on the merits,³
 - holding an urgent hearing with respect to interim remedy, if necessary.⁴

As outlined with respect to our second recommendation, tenants have faced significant delays in having very urgent claims scheduled for hearing. The

² To be clear, quickly and fairly resolving urgent applications, requests and motions on the merits should be a priority, as set out in our second recommendation. But given the practical reality that this may not be possible in all cases, we offer this further recommendation about interim orders.

³ *Statutory Powers Procedure Act* [s. 16.1](#) confers a broad power to grant interim orders of a substantive nature. See *Dua v. College of Veterinarians of Ontario*, [2021 ONSC 6917](#) (Div. Ct.) at paras. 28 to 33.

⁴ In *Guillaume v. Barney Rivers Investments Inc.*, [2021 ONSC 7203](#) (Div. Ct.), the Court stayed an alleged tenant's appeal from an interim order that prohibited the landlord from re-renting (but did not order the appellant back into possession) in part because the landlord had not been given notice of the urgent request to be restored to possession. Thus, while a possession order should be a presumptive interim remedy in any case where an RTA tenant has been evicted without the landlord obtaining an LTB order, procedural fairness may require that the landlord be given notice of the request for such an interim order and an opportunity to be heard. Given their urgency, such requests can be heard in writing and on short notice, as in *90 Ontario St. holdings Ltd. partnership v. [Tenant]* (20 April 2020; Whitmore), File No. TSL-11212-19-RV-IN2 (involving an interim order for possession pending a review hearing in a tenant's request to review an eviction order based on his inability to participate in the proceeding).

stakes are incredibly high where a tenant is experiencing homelessness; a lack of heat, electricity or water; or potentially dangerous maintenance or harassment issues. Timely processing and adjudication of requests for interim orders is essential, especially where a wrongfully evicted tenant is seeking to regain possession of a rental unit that a landlord might be attempting to occupy or re-rent.

In many cases, *ex parte* interim orders (e.g. stays pending a request to review an eviction order; orders prohibiting landlords from allowing persons other than a tenant from occupying a unit; orders prohibiting re-renting; orders prohibiting interference with tenants' possessions; orders prohibiting interference with vital services) offer tenants a measure of protection pending a merits hearing. This is particularly so where the matter can be scheduled and heard quickly.

But there are circumstances (e.g. where tenants have already been evicted, or where vital services have been shut off or essential repairs left undone for an extended period of time) in which a prohibitory order that seeks to preserve the *status quo* may not address the prejudice arising from any delays in having a merits hearing. Such delays may frustrate a tenant's ability to obtain meaningful relief at a merits hearing. Thus, if the LTB is unable to hear a tenant's application, motion or request on the merits on an urgent basis, it should actively offer tenants the option of an urgent hearing with respect to interim remedies (e.g. possession, compensation for the cost of alternate temporary housing, urgent repairs, restoration of vital services, etc.).

Whether made *ex parte* or after a hearing, interim orders must include appropriate enforcement provisions⁵ to encourage timely compliance by landlords, and avoid the need for further LTB applications or protracted contempt proceedings.

With respect to enforcement, in the specific context of tenants' requests to review eviction orders, we would also propose new standard language to be incorporated into the LTB's forms and order templates. We recommend that in addition to providing for a stay, the interim order contain a further provision, enforceable by the Sheriff, directing the landlord to provide the tenant replacement keys and to permit the tenant to return to possession. Such orders should also prohibit the landlord from re-renting or permitting any person other than the tenant from occupying the rental unit pending

⁵ In the Ontario Rental Housing Tribunal proceedings that led to the Divisional Court's decision in *436235 Ontario Ltd. v. Mountfort*, [2002] O.J. No. 4551 (QL), the Tribunal had made an interim order requiring the landlord to give the tenant a key, backed with a \$500 daily fine in the event of non-compliance. The landlord breached that order, leading the Tribunal to calculate the total fine at \$10,000 (which was the maximum fine available under the former *Tenant Protection Act*, 1997), which the Court approved on appeal.

review. This would mitigate against the risk of injustice if a tenant has requested a stay of an eviction order pending review and the order is enforced before the interim stay order can be communicated to the Sheriff.

Tribunals Ontario Portal

5. **The Portal's interface must be adjusted so that a party is not automatically deemed (as a result of an auto-filled checkbox) to have given "consent" to receiving service from the LTB via the Portal** through the simple step of logging in.

Consenting to service in the Portal must require a party to take a more active and deliberate step. The current system creates a serious risk that a party with limited internet access or technology skills might access the Portal with the assistance of a neighbour or community agency and unwittingly "consent" to electronic service due to such factors as a lack of literacy, language barriers or unfamiliarity with the Portal.

Thank you for considering the above priorities. If it would be of assistance, we would welcome the opportunity to discuss these recommendations with you in a meeting or provide further guidance with respect to implementation.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Marcos Gomez

On behalf of the Legal Clinic Housing Issues Committee