



Advocacy Centre  
for Tenants Ontario

Tenant Duty  
Counsel Program

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**Newly released Ombudsman report calls Ontario’s Landlord and Tenant Board ‘moribund’ and found the Tribunal to be ‘unreasonable’ under provincial law. Yet, in some ways, the investigation still missed the mark on justice.**

For years, tenants and their advocates have been asking the province to fix Ontario’s busiest yet most broken tribunal, the Landlord and Tenant Board (“LTB”). The LTB’s pandemic era shift to a primarily remote service model – holding hearings over Zoom and filing forms and evidence through their digital portal – has been rife with problems from the outset. Tenants, especially those living on low incomes, have been particularly impacted. A digital/remote service model has created even more barriers for many tenants to participate in their hearings and successfully present their evidence, as many tenants living on low incomes have limited or no access to a computer and reliable wifi. It is hard for a tenant to stop their landlord from evicting them if they can’t actually show up to their hearing.

Despite these digital barriers and the degradation of access to justice they pose for tenants, what finally got the attention of the Ombudsman’s office was the unprecedented delays in hearings and rulings, delays that have seeded an enormous backlog of tens of thousands of cases – almost 40,000 at present.

The [report outlines](#) some of the many failures of the LTB; including the failure by the province after the 2018 election to reappoint seasoned adjudicators and promptly appointing new adjudicators to replace those whose terms had ended. This attempt to run the LTB with many adjudicators who were inexperienced and unfamiliar with residential tenancies law, and not providing them with the appropriate support, has been an unmitigated disaster for procedural fairness and for just outcomes. The report also acknowledges the shocking finding that some tenants are waiting up to two years to have their applications scheduled; by contrast most landlords only wait 6-9 months. The Ombudsman notes that “it is unconscionable to permit tenant applications to lie dormant for up to six years.” The explanation given was that they did not set aside enough time for those hearings. This might have been understandable for a new tribunal but it is unacceptable for the LTB, which has been operating since the late 1990s. This significant disparity signals to Ontarians that tenant rights are inferior to landlord rights and that tenants deserve less justice.

Further, the report found that the LTB only granted a tiny fraction of requests for in-person hearings, accommodating a measly 4.3% of total requests made. Their track record is similarly dismal on amount of requests for use of a public access terminal at just 31.1% requests granted. This speaks not to the

demand for such services but to the barriers that Ontarians have to overcome trying to access their tribunal.

The dysfunction goes deep, and it's every day Ontarians who suffer the consequences – and none more so than tenants, who are being unjustly and unfairly evicted in droves. Yet, what troubles us deeply as tenant advocates and legal experts is not just what's in the report, but rather, what was skirted past or omitted entirely from the investigation and resultant report.

First, the report suggests that the delays are due to poor implementation of its new software program. Unfortunately, it neglects to acknowledge that, prior to the move to its current remote service model, the LTB was processing far more applications (80k/year) a decade ago. It was doing so with fewer adjudicators than it has now and scheduling hearings faster overall, with landlord applications being scheduled within 5 weeks and tenant applications scheduled within 6 weeks. Whether it was due to lack of user consultation or another factor when designing the service, the LTB chose not to use existing best practices but instead introduced a brand new digital system that cannot perform basic functions (such as tracking mediated agreements or outstanding files). Thus, it goes beyond poor implementation. Software that cannot even perform basic tasks will continue to lead to delays.

Second, the report also outlines the digital divide that tenants face as a result of the LTB removing all of its in-person services and 44 hearing locations to its current remote service model. Its recommendation to provide an IT support hotline (introduced last month after 2.5 years of zoom hearings) as a sole solution does not recognize the depth and extent of the digital barriers created by the LTB. In-person services provided meaningful access for people with data and phone minute limitations, who did not have the appropriate computer equipment, with language barriers, numeracy and literacy issues, and disabilities. They were able to better participate in their hearings and assert their rights. It's much harder to achieve this in the current digital format.

Third, the report mentions that, in the past, hundreds of people would file into the hearing rooms each day. This was true and actually a good thing. Parties were able to resolve more disputes before appearing before the adjudicator, because they were able to access homelessness prevention programs that were staffed nearby. Tenant duty counsel services and mediators were also available. More resolutions achieved proactively meant fewer matters moved to a hearing and the backlog did not pile up. Currently, there are far fewer mediators attending hearing blocks than there were in the past. The same is true for duty counsel and social service providers. Now, since those interventions are less readily available in this new remote hearing format more matters proceed before the adjudicator. When sustainable tenancies are not maintained through either through interventions or being able to assert one's rights at the LTB, it worsens the province's existing homelessness and housing crisis. We must do everything we can to prevent evictions by providing upstream supports and that includes restoring these supports and options for tenants.

It is also clear that the Ombudsman heard most from landlords and their representatives, and the 61 recommendations outlined reflect that. Of the thousands of complaints submitted to their office, 84% were from landlords. The loudest and squeakiest wheels do, it would appear, get the grease.

**Where does that leave tenants?**

So where does that leave tenants? We know from our research that tenants struggle to participate in digital hearings much more than landlords do. The LTB has consistently refused to make in-person hearings readily available for Ontarians who need them and the report cited that in-person hearings represented just 0.07% of all hearings held during the summer of 2021. That does not mean in-person hearings are not necessary. It means that the LTB has abjectly failed to offer them as a viable option and made it absurdly difficult for tenants to make that kind of request.

Beyond recommending an IT support telephone line, there are hardly any meaningful recommendations in the report that would resolve the digital barriers that tenants experience. This is disappointing and a missed opportunity to address the deeper challenges at the LTB.

Even if a tenant does make it to their hearing, the report also notes that many adjudicators must hear 60 – 80 matters a day. The ends up being around five minutes for each matter. Even worse, things are so dysfunctional that evidence submitted sometimes is so far down the pipe it is not included in the case file in time. Therefore, an adjudicator may not be able to consider all of the relevant evidence. In an eviction case, that means a tenant can be rendered homeless in just five minutes, sometimes without all of the evidence being considered. Imagine, if you will, a homeowner being told their bank will take just five minutes to decide whether or not to re-possess their home and the decision would be based on an incomplete file. Can you picture the outrage? Yet, that's exactly what happens to thousands of tenants each year at the LTB.

### **What we recommend**

There are a number of actions that the LTB can do to improve the dysfunction and restore access to justice for tenants. Our recommendations would also have the benefit of addressing the backlog and shortening wait times.

They are:

- Return to regionally based in-person services across the 44 former locations
- Provide in-person hearings and accommodations for those who need them, and clear avenues to request these options. All parties should participate in a hearing using the same format.
- Return to scheduling matters by region, rather than application type. Applications related to the same address should be heard together.
- Treat tenant applications with the same gravity and urgency as landlord applications
- Significantly improve mediator and adjudicator training on landlord and tenant law
- Create a process for legal representatives to view LTB case files even if not retained
- All LTB forms and notices should be written in plain language and in compliance with the Accessibility for Ontarians with Disabilities Act (“AODA”.)
- Hire former, seasoned adjudicators to address the backlog
- Use the technology at hand to track data related notices, filings and outcomes to better monitor eviction notices and outcomes

We urge the LTB and Tribunals Ontario to implement our recommendations. Anything less will result in a continued failure to address the needs and concerns of Ontarians.