

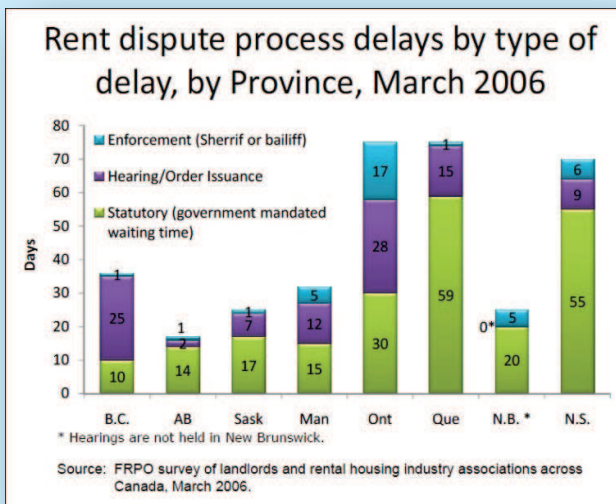


ARTICLES

The Slow and Fast Ways to Evict a Tenant in Ontario

Ever had a tenant with enough money for beer and cigarettes but not enough for the rent? The list of reasons a tenant can't pay the rent is as long as an epic novel and just as creative.

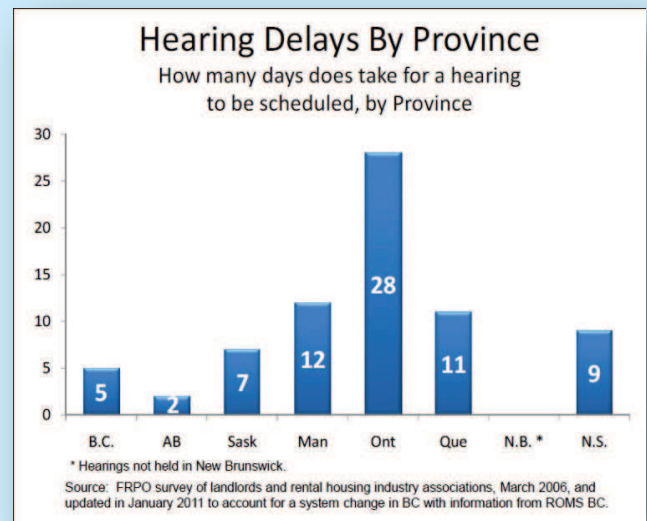
Ontario is one of the most legislated and bureaucratic regions in the world for tenant-landlord relationship management. The chart below, taken from a February 2011 report titled, *Justice Denied: Ontario's Broken Rent Dispute Process*, published by the Federation of Rental Housing Providers of Ontario (FRPO), indicates that the *typical* eviction process takes about 75 days



Source: *Justice Denied: Ontario's Broken Rent Dispute Process*, Federation of Rental Housing Providers of Ontario (FRPO), Feb/11

(assuming no landlord mistakes or deliberate delays successfully introduced by the tenant).

Add the "average" 28 days of hearing delays, per the following chart from the same report and you can see why the report is so titled; 103 days (average)!



Source: *Justice Denied: Ontario's Broken Rent Dispute Process*, Federation of Rental Housing Providers of Ontario (FRPO), Feb/11

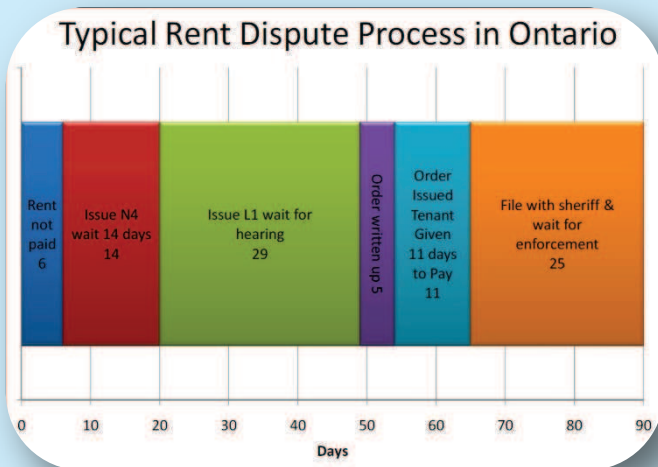
How Many Ontarians are we Talking About?

According to the same FRPO paper, "... most Ontario renters are good tenants. In 2008 09, L1 applications for nonpayment totaled about 59,000 applications; [representing] tenants who had not paid their rent by at least 15 days after it was due, during the year. That represents about 4.5% of the tenant population in the province. Of those, FRPO expects about two - thirds ultimately retain tenancy because they paid their arrears. That means about 1.5% of tenants ultimately leave without paying their rent, and about 3% of tenants force their landlord to utilize Ontario's rent dispute process in order to enforce payment."



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Source: Justice Denied: Ontario's Broken Rent Dispute Process, Federation of Rental Housing Providers of Ontario (FRPO), Feb/11

The Official (tedious and slow) Process

Day 1: rent is due

Day 2/3: issue a reminder

Day 4/5: Issue an **N4 Form**: notice of early termination for non-payment of rent under the LTB. Complete online, sign and serve to tenant:

- Never send by registered mail without sending by regular mail
- Must allow 14 days, excluding day of service + 5 days if mailing (that is, not delivering in person)

Day 25: Complete an **L1 form**: application to terminate the tenancy. The form states, "You don't have to move if you don't want to ..."

- LTB fee: \$170
- Fill out Certificate of Service
- Set a date for the hearing – tenant has a right to a defense
- Receive notice of hearing

Day 26/27: Serve the tenant with L1 and Notice of Tenant Hearing

Day 28/29: Fax copy of Certificate of Service, L1 and Notice of Hearing to LTB

Day 46 (or so): LTB Hearing

- Adjudicator will want to see the Tenant Ledger (rent roll for the tenant) and lease or rental agreement
- Seek mediation (on site at LTB) or go to the hearing
- Obtain a **STANDARD ORDER** from the adjudicator (11 days from the date of the order for the tenant to vacate the unit)
 - Get back possession of the unit (vacant possession)
 - Want compensation for rent shortfall

Day 57: Go to the sheriff's office

- Effective date of the eviction order. The eviction document was mailed to the tenant from the LTB.
- Landlord pays \$435 (depending on municipality) fee to enforce the order/judgement
- Complete a questionnaire about the tenant (guns, diseases, violence, etc.)

Day 59: Sheriff posts notice on the door

- **TENANT CAN STOP THE PROCESS UP TO THIS POINT**, provided the tenant pays the arrears and the various filing fees
- If the tenant pays, the **LANDLORD MUST GO THROUGH THE PROCESS AGAIN IF THE TENANT AGAIN DEFAULTS ON RENT**

Day 68: Sheriff appears to conduct the eviction. The landlord must be present. The locks are changed.

- The landlord probably has vacant possession but not arrears
- To collect arrears, go to the Sheriff, use the tenant's Letter of Employment to garnish wages (fee in \$160). You can attempt to collect court costs, sheriff fees and interest
- You can also go to Small Claims Court

The Cost of Eviction in Ontario

The costs of rent delay, eviction and rent collection can be substantial in Ontario. Below is an example of an *average* rental situation:

- **Lost rent:** average Ontario rent is about \$900 per month. Three months = \$2,700
- **LTB application fee:** \$170 for *each* L1 (could be several L1s before you can apply to evict)
- **Legal Fees:** estimate about \$360, possibly more. You shouldn't try to represent yourself but if you do, add the value of a day of work. You'll pay, either in legal fees or in lost productivity and time.
- **Sheriff's Fee(s):** Sheriff enforcement of an eviction is \$315, or more if there are complications or multiple visits required.
- **More of your Time:** In addition to the LTB hearing, add your time to manage the lengthy and complicated eviction process. I guarantee to you that this is a *substantial* amount of dollars.



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- **Unit Damage:** The long eviction process allows tenants many opportunities to retaliate against the landlord in all kinds of ways, from simply cranking up the heat, letting water run constantly and keeping the stove on all the time, to outright vandalism and worse.

Type of Loss	Cost
Lost Rent	\$2,700
Application Fee	\$ 170
Legal / Agent Fees	\$ 360
Sheriff's Fee	\$ 315
Landlord's time	\$???
Typical Damages	\$ 500
Re-leasing costs	\$ 1,200
Total Costs	\$5,245+

Source: *Justice Denied: Ontario's Broken Rent Dispute Process*, Federation of Rental Housing Providers of Ontario (FRPO), Feb/11

- **Justice Delayed:** The LTB tribunal is well-known for allowing tenants to introduce all kinds of delaying tactics, including especially Section 82 of the *Residential Tenancies Act*, to raise matters you and the tenant both know are irrelevant to the case, but which still results in adjournments
- **Re-Renting Costs:** You have additional advertising expenses and possibly commissions (to a property manager or realtor) related to the unit that may be in addition to the usual costs of doing business. You also have no rental income to offset against these extra costs.
- **Delay in Re-renting:** You cannot re-rent or re-lease the apartment until you are certain the

existing tenant is gone. It can take a month or more between the time of advertising and the time that a new tenant may be able to move in. This cost is often not incurred for tenants who vacate properly, providing two month's notice.

- **Interest:** You may incur interest costs on money borrowed to cover mortgage shortfalls and vendor bills or you may have lost interest income from not having the rent money in a short term investment.

The table above suggests your 3-month loss would be perhaps \$5,000 or so. Do your own calculations. You may be surprised to discover that your number is actually quite a bit higher.

The Unofficial (and a promisingly) Faster Way

Until legislation in Ontario is implemented that better balances the rights of the landlord and the tenant, landlords will be need to find creative ways to legally find faster and "better" methods for encouraging bad tenants to leave.

The most often repeated piece of advice is to do your research on the applicant before renting to minimize your chances of bringing in a bad or "professional" tenant. One thing I ask for, but which a landlord cannot demand, is post-dated cheques. While a stop-payment can be easily issued on a cheque, it's arguably an indication that things were fine when the tenant first moved in, and it perhaps represents a psychological element of the tenant's commitment to paying rent on time every month, notwithstanding the mutual conveniences for the tenant and landlord to have the rent paid always paid on time.

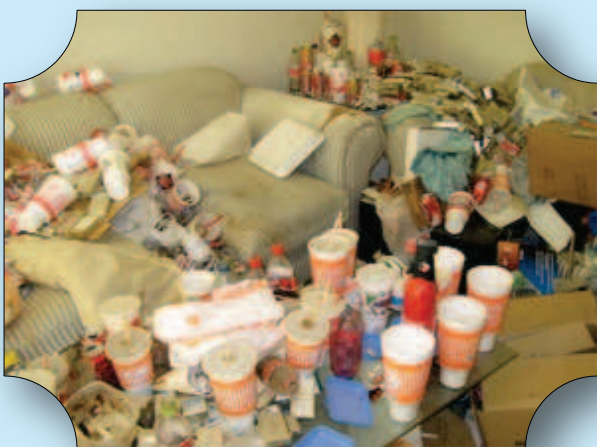


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Having said that, you nevertheless now have an habitually late-paying or non-paying tenant. You should always act quickly and affirmatively when the rent is not paid on time. Issue an N4 immediately (I typically issue one on the 3rd day). The tenant still has two weeks to pay with minimal financial consequence to you and none to them. Tenants are your customers, not your dependants or friends. You cannot allow yourself to become emotionally entangled in their financial issues, and they must understand that rent payment is not an optional expense.

Here is a “good cop – bad cop” method I have successfully used that will work on some tenants. Nothing here is illegal, or, as far as I am concerned, morally wrong, provided you deliver the message with tact and diplomacy that shows your respect for the tenant, regardless of their circumstances or demeanor. Preserving the dignity of the tenant will also minimize the chances that a tenant will trash your unit when they move out.



Not being allowed to collect a security deposit, combined with the long eviction process, has resulted in apartments all too frequently being trashed (often literally).

1. To the Tenant: *I have bad news and good news.* Prepare in advance of your meeting with the tenant a review of the issues that have brought you and them to this point, but don't lay blame on anyone. The conclusion should simply be that, in all honesty, they can't afford to live here.
2. Depending on the tenant (use your good judgement), you might remind them that they might not see it the same way, but not paying the rent is not much different from stealing a high-ticket item off a department store shelf.
3. Tell them that you will be sending a record of the tenant's paying history to the major credit reporting agencies. Any landlord doing their due diligence during the application process will learn that the tenant has a bad payment history.
4. Mention that most landlords' rental applications require the tenant to disclose the last one or two places of residence. Tell them that a referral from you would not be favourable if you received a call from such a prospective landlord.
5. State that, as a landlord, you must protect your interests so you will seek a judgement against the tenant in Small Claims Court. This judgement will also be added to their credit history and it means you will have some additional legal recourse to collect the outstanding monies, including asking for garnishment of the tenant's income (when they eventually do obtain some income).
6. Say that the longer they remain in the unit without paying rent, the greater the hole they are digging for themselves. Not only are they amassing debt for rent but also for legal fees and other collection charges. State that you will turn over the tenant's non-payment file to a collection agency that



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specializes in rent collection. Tell them that the agency only gets paid when the agency collects the owed monies, so the agency, which is equipped with computers that “remember” everything, will pursue the tenant relentlessly. This is not harassment. It is a justifiable, legal remedy available to you as a landlord.

7. Remind the tenant that if they think they cannot be found when they move, that this is a false assumption. If the tenant tries to apply for any kind of credit in the future, such as to pay for utilities, the odds are high that they will be found.

Note that there is legal precedence to hold a person, including especially a company, responsible for what they represent. If a landlord gives a false reference (good or bad) and it can be proven by the tenant or the next landlord that the referral was false, the referring landlord could have a serious legal issue. Be prepared to back up whatever you say in your referral.

Having now outlined to the tenant all the action items you intend to effect in pursuit of your legal right to collect rent, and hopefully not having stirred up your

tenant’s ire, move on quickly to the “good news.” If they are already riled, ask them to please be patient with you and allow you to finish what you want to say because

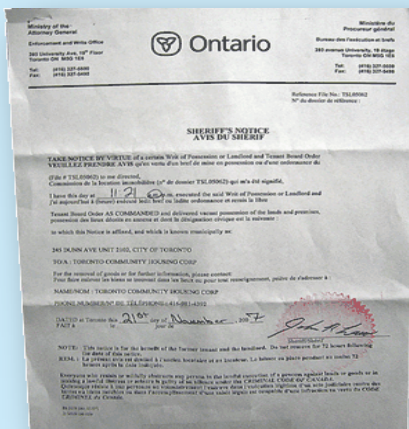
it is not your desire to make matters worse for them but rather to offer them a solution for their consideration.

To the Tenant: *Here is what I would like to offer.*

1. *If you move out by the end of the month (or whatever works for you), I will pay you \$xxx cash (whatever amount you think will compel them—I find that \$300 is generally a good number).*
2. *I will give you the cash when you return the keys, and provided you leave the unit in the same tidy and clean condition as when you first took possession.*
3. *I will also forgive your current debt (assuming you acted quickly), not pursue the credit report, or the other legal actions. If someone calls me for a referral, I will not provide one but will simply state that we mutually agreed to terminate the rental agreement for reasons personal to the tenant that I cannot disclose.*

Obviously, the above proposal must be a better business case for you than the official process.

4. Prepare in advance a short letter addressed to them and signed by you that outlines the offer to settle. Get them to sign the letter but only if they are agreeable to the offer and make certain that you have *not* coerced them in any way.
5. You must also complete the one-page Landlord and Tenant Board (LTB) N11 form—*Agreement to Terminate a Tenancy*. It is effectively a mutual release and it is very succinct and clear about what the tenant’s and landlord’s rights are. With the signed N11, if the tenant doesn’t move out as agreed, you can immediately apply to the LTB for an order to evict without further notice.





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6. If you know of any social assistance programs in your area, put forward organization names and contacts and suggest they consider them. Suggest also the YMCA/YWCA, Salvation Army, single mother hostels, religious institutions, charities, and so on. While they may feel some resistance to looking at such options, you might remind them, empathetically, that they need to seriously consider their current situation and if they have any hope of getting out from under their

mounting burden, they need to take remedial action as quickly as possible.

If you are honest with yourself and weigh *all* the true costs of working through the LTB Rent Dispute process, and add the intangible value of the emotional grief a bad tenant brings, offering an incentive to 'just leave' may well be your best solution.

I am a commercial realtor (broker), based in Toronto, Canada focused on multi-residential (rental apartment) buildings.

As an owner/operator I am also intimately aware of the issues, challenges, personal financial and estate planning considerations, rewards, and sense of accomplishment that come from managing the human relationships, business challenges and operational issues of owning a rental property.

I can help you do the same.

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