Justice Denied:
Ontario's Broken Rent Dispute Process

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"To no one will we sell, to no one will we refuse or delay, right or justice."
-Magna Carta, clause 40

EXECUTIVE SUMMARY

Ontario's rent dispute process is broken. Repairing it would save the province money, and bring us in line with almost all other provinces. As currently designed, most of the resources in Ontario's system are used to enforce rent payment, a straightforward matter. This legal process can be nullified at any time by tenants if they pay their rent arrears. If they do not, a landlord is allowed to evict the tenant. Unlike banks and other lenders, landlords do not have the luxury of collateral, so eviction, or the threat of eviction, is the only mechanism available to landlords to enforce payment or to stop troublesome behaviour. What doesn't work is the length of time it takes to resolve the issue and the fact that the landlord foots the bill for the tenant until the tenant leaves.

Our report catalogues the numerous problems and delays that plague Ontario's rent dispute process. The findings are quite simple. The rent dispute process in Ontario is excessively long, and is unjust to landlords. It typically takes 90 days in Ontario for a dispute to be finally resolved, and costs the landlord about $5,200, not including administrative costs, lost time and productivity. That's only the typical process. If a "professional tenant" is involved, he or she uses requests for internal Board reviews and appeals to the Superior Court to add even more delays; these tenants easily use Ontario's system to bilk landlords of up to one year's rent, suffer no consequences, and cause severe financial and emotional distress for landlords.

Ontario's outdated rent dispute process needs to modernized. Most other jurisdictions in Canada have fair and efficient rent dispute processes in place, proving an efficient system is achievable. In the western provinces, the process takes anywhere from one fifth to one third the time it takes in Ontario.

The report argues that the broken system is also bad for tenants. For a number of tenants, the delays in the system only make matters worse for them, leading them to develop large arrears which they can't rectify, and ultimately affecting their credit rating and their future. Furthermore, the cost of Ontario's lengthy system is borne by tenants, because all costs are ultimately passed on to customers. It is well known that many of these tenants are struggling to pay their rent, and it is unfair to make them bear the costs of non-paying tenants.

The report makes a number of recommendations as to how Ontario's process could be modernized, primarily by reducing the unnecessary delays in the system. Quicker justice would be better and fairer for both landlords and tenants.

FRPO looks forward to a positive discussion with the province about why reform is needed in Ontario.

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"Justice delayed is justice denied"

-William Ewart Gladstone[1] 1868

-Toronto Star headline, 2007

INTRODUCTION AND BACKGROUND

In any rent dispute process that exists around the world, ultimately a tenant is evicted when they do not pay their rent. The use of the word "eviction" to some is problematic, particularly when the word is used by rental housing providers (or "landlords", although we prefer the former term). However, eviction is necessary to deal with tenants that disturb other tenants, and tenants who ultimately do not pay their rent. It is a necessary fact of life. Without eviction, and the threat of eviction, collecting rent is impossible, and the protection of the interests of all other tenants is not possible.

For many landlords, the rent dispute process is not really considered an "eviction" process. It is a process to collect rent, or a process to protect the majority of their customers from the disturbing behaviour of another occupant - an important quality of life issue in a multi-residential setting. In this paper we will refer to the process generically as the rent dispute process. It should be noted that landlords want to keep customers, and would love to collect debts from tenants who are in arrears and want to stay. It is better for business, since it is very difficult to collect arrears once a tenant leaves, and it is costly to incur a vacancy and find a new tenant. However, if a tenant will not pay, we need a fair and efficient process to minimize the large revenue losses associated with current legislative requirements to provide housing for free for an extended period of time.

Because the rent dispute process may involve eviction, FRPO believes that the instinctive reaction of those in the public policy process to the term has resulted in a massive distortion in public policy – the issue is not viewed objectively when policy is developed or changed. As a result of this natural bias, over the years Ontario's rent dispute process has evolved into a nightmarishly long and unfriendly process for landlords dealing with a difficult problem.

No one is saying that tenants shouldn't have a fair opportunity to have their say or have a chance to resolve their dispute. However, Ontario's imbalanced system has long since moved beyond fair. We now have a system in Ontario that actually caters to those who wish to unfairly abuse the system at a considerable cost to landlords and the other tenants.

FRPO believes that the time has come to have a reasonable discussion about the issue in Ontario. How long should a landlord be forced to house a tenant for free who refuses to pay rent, or is disturbing other tenants? What is wrong with swifter justice? Why is the process so long in Ontario, and drastically shorter in some other Canadian jurisdictions? While we are aware that the provincial legislation governing this issue was recently reformed, the provincial government indicated that their main intention was "make the system fairer for tenants".

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[1] Laurence J. Peter, *Peter's Quotations,* p. 276 (1977).

Therefore, no consideration was given to the existing and worsening problem of an excessively long process which is unfair to landlords and most tenants.

Why Do Landlords Have to Provide Free Housing?

The philosophy that underpins Ontario's current system is that landlords are obligated to provide free housing to tenants if they decide not to pay the rent. FRPO questions this philosophy.

Firstly, other businesses are not treated this way. Grocery stores are not obligated to provide free food to customers who no longer wish to pay. Clothing stores do not have to continue to provide free clothes when customers will not pay. Restaurants are not required to service customers who will not pay. Commercial real estate owners are not obligated to provide free real estate to customers who no longer to pay. And so on. But when it comes to residential landlords, our system requires that the landlord continue to provide housing for an extended period (three months or longer) when a tenant won't pay.

Secondly, it is inappropriate to put the burden of providing free services to households on one small segment of society. Landlords as an industry represent less than 1% of the province's GDP. Yet government policies require landlords to incur an unfair burden to provide free accommodation. If it is a public policy that free housing is provided when someone will not or cannot pay rent, then society should bear the cost of that social policy, not one small segment of society.

Thirdly, these costs are ultimately borne by paying tenants. In Ontario's rental marketplace, all costs get passed on to tenants, the same as they are in all other competitive businesses. So when some tenants don't pay, it is ultimately all the other tenants who will bear the cost. The tenants who bear this burden are often low-income households themselves who are having difficulty paying their rent.

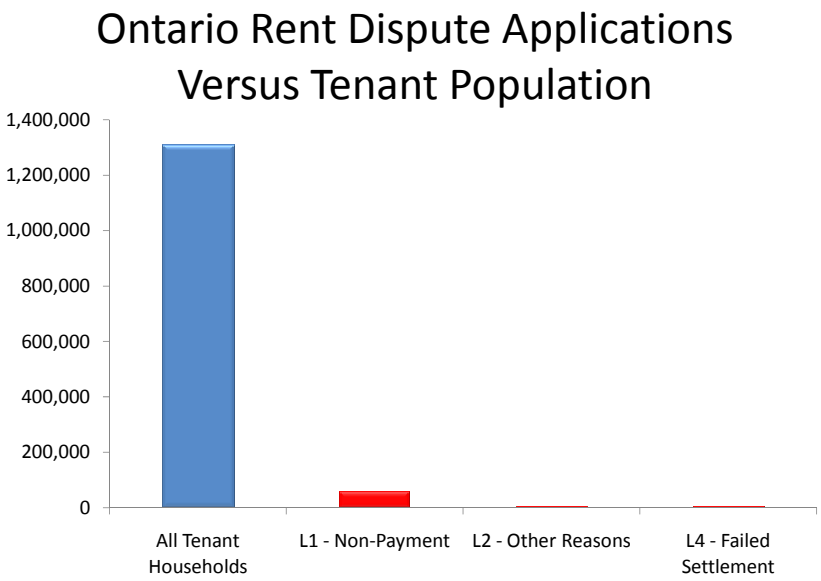
Finally, it is the length of time that free housing must be provided that is of great concern. The current system requires that landlords provide typically 3 months or more of free housing to non-paying tenants. With a typical monthly rent of $1,000 per month, that is a $3,000 subsidy in lost rent alone, not including legal and application fees associated with the non-payment process. This is a large cost for one landlord to incur with respect to one unit. In the case of a small landlord, it is devastating.

Landlords Typically Can't Recover Unpaid Rent

When tenants don't pay, landlords typically cannot collect any monies owed. This is unlike the ownership situation where banks have collateral. If a homeowner does not make their mortgage payments, the bank can repossess the home, and recover their costs by selling the home. They also often have mortgage insurance in place for higher risk customers, further mitigating any potential losses. Landlords do not have either of these luxuries.

The Extent of the Problem

Most tenants are good tenants. The issue being raised in this paper only applies to less than five percent of the tenants in the province. In 2008-09, L1 applications for non-payment totaled about 59,000 applications. That means that in all of Ontario, about 59,000 tenants had not paid their rent by at least 15 days after it was due, during the whole year. That represents about 4.5% of the tenant population in the province. Of those, based on past surveys, FRPO would expect that about two-thirds of the tenants would ultimately retain the 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.



Source: FRPO based on LTB Annual Report 2008-09, p. 18

Even though the problematic tenants represent a very small percentage of all tenants, the cost to landlords and all other tenants can be significant. We will talk about the cost impact this small group has later in this paper.

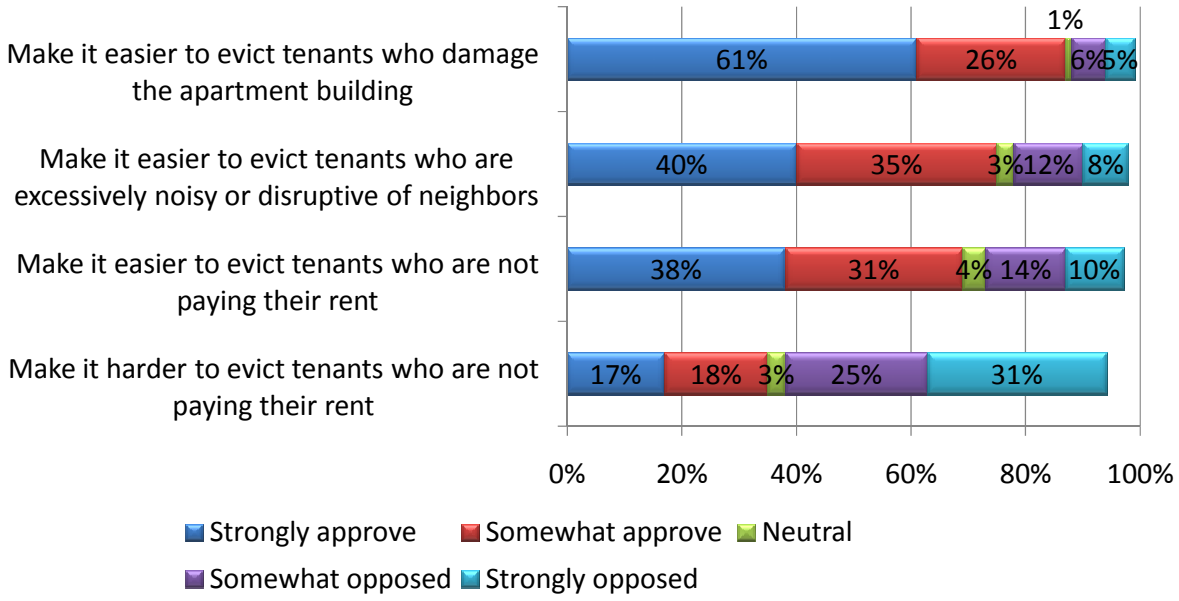
Fixing the System is not "Anti-Tenant": Tenants Support a Fairer System

Over the years, FRPO has found that those stakeholders who call themselves tenant advocates work hard to prevent any changes to residential tenancies legislation that would make the rent dispute process more efficient, while still allowing for a fair hearing. In taking these positions, FRPO would argue that they are not representing the majority of tenants who do not favour such a position. Tenants are not in favour of a long cumbersome rent dispute process.

The chart below shows the results of one question from a poll of 801 tenants done for FRPO in July of 2004. The poll shows that the majority of tenants favour making it easier to evict tenants who are not paying their rent. Keep in mind that their responses indicate they are in favour of it, even though they are likely unaware how cumbersome Ontario's current system is. They are also extremely supportive of legislative changes that make it easier to get rid of troublesome tenants who damage apartment buildings. Often these things go together, with non-paying tenants causing damages to the rental building in retaliation for the landlord taking actions to address either their abusive or non-paying behavior.

Ontario Tenants' Views on Eviction

Question: The government has created a rental tribunal to handle disputes between landlords and tenants. I am going to read you a list of possible changes to the powers of the tribunal. In each case indicate if you approve or are opposed to this change in the tribunal's power.



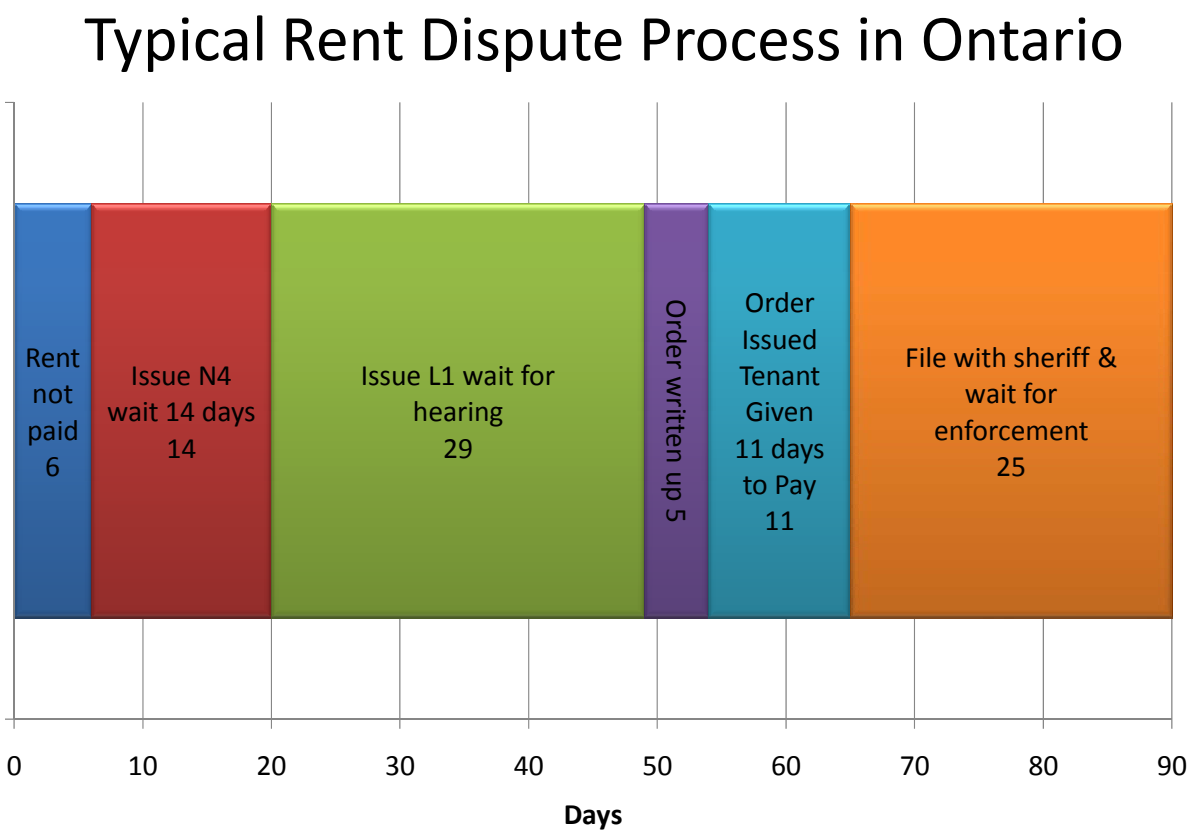
Source: Survey of 801 Ontario renters in Ontario between July 12 and July 21, 2004. The sample was weighted to reflect regional proportions and overall results are accurate to within plus or minus 3.46%, nineteen times out of twenty.

"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law - in the larger sense - cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets."[2]

-U.S. Chief Justice Warren Burger, 1970

OVERVIEW OF THE PROCESS

The chart below summarizes the current rent dispute process for a tenant who is not paying their rent. Altogether, the delays in the Ontario process mean that it takes about 90 days on average to deal with a tenant who refuses to pay, and who drags out the process. This is an average. This means that, in many cases, it takes much longer. If you have a tenant who uses additional legal maneuvers as a delay tactic, such as requests for review and appeals to the court for a stay, the process can take much longer. This lengthy process contrasts with many provinces where the entire process takes two or three weeks.



In the sections that follow, we discuss the various delays in the Ontario process and why they are unreasonable.

[2] What's Wrong With the Courts: The Chief Justice Speaks Out, *U.S. News & World Report* (vol. 69, No. 8, Aug. 24, 1970) 68

STATUTORY 14 DAY DELAY TO ISSUE AN L1

In Ontario, a landlord typically waits a few days before issuing a *Notice To End a Tenancy Early For Non-payment of Rent* (N4). Landlords typically use this time to attempt to contact the tenant and find out why the rent has not been paid, and to attempt to collect the rent. If they can reach the tenant, and have a reasonable discussion about the problem the tenant is having, many landlords will work cooperatively with the tenant on a repayment plan. However, the process does not officially start until an N4 is issue.

Under the *Residential Tenancies Act, 2006* (RTA), once an N4 is issued, the landlord must wait a minimum of 14 days before they can apply to the Landlord and Tenant Board (LTB). This increases to 19 days if the notice is mailed.

This delay alone makes up about two-thirds of the entire process time (from the first day of non-payment to eviction by a sheriff or bailiff) in Alberta (21 days) and BC (22 days). It represents about half the entire process time in Saskatchewan (26), Manitoba (32), and New Brunswick (28 days).[3] Appendix A provides more details on the eviction process delays by type of delay for each province in Ontario. There is no good rationale for such a long delay, particularly in the context of the overall delays already inherent in the current system.

The 14 days does not have a modern policy basis. It is a hold-over from a previous era – before Part IV of the *Landlord and Tenant Act* was created in Ontario in 1969. Prior to the development of Part IV, residential landlords were governed with the same parameters as commercial landlords. Fourteen days was the amount of time a landlord had to wait before they could change the locks on an apartment. With the introduction of Part IV, residential landlords were prevented from changing the locks in Ontario before a Court order had been enforced. The legislators did not adjust for the fact that the new system would add weeks to the already existing 14 days when they changed the legislation. The current procedures are yet again more time consuming than the Part IV procedures.

Knowing that the rest of the process in Ontario now takes about 70 days on average, a 14 day delay is excessive and unwarranted. FRPO recommends that landlords be allowed to serve an L1 and schedule a hearing date five days after they have given an N4. This would reduce the overall delay in the system by 9 days.

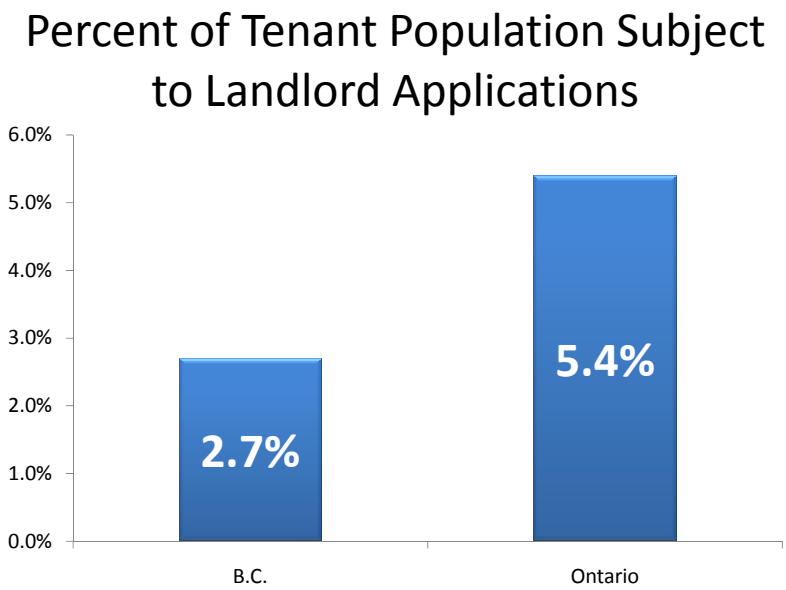
Allowing for five days gives tenants plenty of time to respond with payment. There need not be a concern about excessive LTB applications or about administrative volume. Here are some reasons this should not be a concern:

[3] Except for B.C., these statistics are from a March 2006 survey by FRPO of rental housing owners, managers, and industry associations across Canada. The survey asked how long it would take to evict a non-paying tenant who uses the full length of the process before being evicted, and for details on each step in the process: statutory delays, hearing delays, and enforcement delays. In January of 2009, B.C. reformed its process and reduced the process length from 37 days to about 22 days currently, according to FRPO's colleagues at ROMS BC.

- First, in Ontario's system, tenants have up until the day of enforcement by the Sheriff to pay and void any eviction proceedings. At any time, a tenant can halt the eviction process immediately by paying. They already have very strong protection.

- Secondly, almost by definition, the increase in volume to the LTB will only be those applications where the tenant would have paid all the arrears between days 6 and 14 after an N4 under the old system. The vast majority of these tenants will still pay in this timeframe. As pointed out in the previous bullet, this immediately voids the eviction proceeding. Therefore, for these additional applications, the LTB will be gaining revenue, but not incurring in increase in hearing costs. The change would result in a net benefit for the LTB. It will be up to landlords to determine whether they want to incur application fees after a five day grace period to tenants to eliminate their breach of their payment obligation.

- Thirdly, a process that leads to a hearing sooner will better impress upon tenants the importance of acting quickly to resolve arrears issues. By delaying any serious implications, the current system gives tenants a false sense that they can take their time, causing more rent dispute applications. For most tenants, it would be better for them to respond quickly to arrears issues: delay results larger and growing arrears, making it harder and harder for the tenant to rectify their problem. A likely result of a quicker process is that there will actually be fewer applications, as tenants come to recognize that there are prompt consequences to non-payment. This is demonstrated by comparing the number of landlord applications in B.C. and Ontario as a percentage of the tenant population. In Ontario, landlords have to make twice as many applications as B.C. landlords. B.C.'s more efficient system generates far fewer applications to their Residential Tenancies Branch.



Sources: 2010 LTB Annual Report; Statistics Canada 2006 Census of Canada; ROMS
B.C. 2010 data from the B.C. Residential Tenancies Branch.

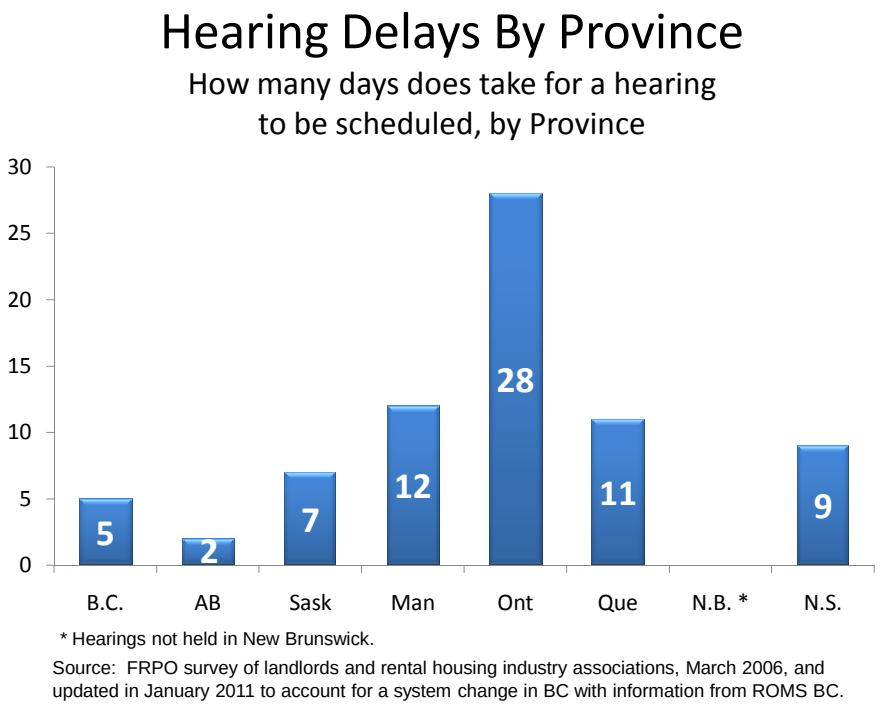
Finally, considerations of justice should not be based on the administrative convenience. Even if there were an administrative implication for the LTB, which is unlikely, it should not be a rationale for making or keeping a cumbersome, inefficient and expensive system in Ontario. A shorter timeframe would be fairer, particularly in the context of the overall length of the system, and the many safeguards for tenants. Justice and fairness should be the primary consideration in reviewing the current system, not administrative convenience.

Recommendation: amend Section 59. (1) (b) of the *Residential Tenancies Act* (RTA) to allow a landlord to give the tenant a notice of termination (i.e. issue an L1) effective on the 5th day after termination, rather than the 14th day.

HEARING DELAYS

After issuing an L1, a landlord must wait for a hearing. Currently, a typical applicant has to wait about 29 days for a hearing after serving an L1 ("Application to evict a tenant for non-payment of rent and to collect rent the tenant owes")[4]. This is the longest hearing delay of any jurisdiction in Canada, as shown in the chart below. The hearing delay alone is longer than the entire process in four Canadian provinces.

Given the ability of other jurisdictions to provide hearings much more quickly, there is no justification for such a delay in Ontario. In fact, hearings are not even seen as necessary in New Brunswick.



Part of the problem stems from an acceptance of such a delay. Consider the fact that the hearing delays have been high and have remained fairly consistent over time. This means that a steady flow of applications has been maintained at a 29-30 day delay over a long period. It therefore means that a steady flow of applications could also be held at a five day delay over a long period. All that is needed is a one-time effort to reduce the delay from 29 days to five days. Once the delay has been reduced to five days, the LTB could operate exactly as it has been over the past decade and maintain a consistent delay period of five days.

In addition to a one time deployment of resources, it is evident that the LTB needs some increase in resources on a permanent basis, or a method of becoming much more efficient, as

[4] FRPO recognizes that former Tribunal and LTB show a lower average time to hearing of about 22 days in the 2008-09 annual report. However, FRPO regularly hears about much longer hearing delays in Toronto. Also, this data is from a survey of users, so needed to be kept consistent across jurisdictions. Finally, members have been suggesting the system has been getting much slower recently.

the feedback FRPO is getting from its members is that the system is getting slower and more bogged down since recent reforms were made.

There are a few options to consider in reducing the excessively long hearing delay process in Ontario: 1) one-time resources for the LTB to reduce the steady-state delay period; 2) regulatory changes that would reduce delays; 3) performance objectives and metrics for the LTB; and 4) eliminating oral hearings for non-payment of rent. Each is discussed further below.

One Time Resources for the LTB

As discussed above, the LTB has been maintaining a fairly steady-state delay between application and hearing for L1 matters of about one month. The pace of application inflows has roughly matched the pace of hearings and order outflows over a period of many years. While it has gotten worse lately, it was not that much better at the inception of the Rental Housing Tribunal in 1997. Given the long period where inflows have roughly matched outflows, simple business process analysis suggests that one time resources could eliminate a large component of delays built into Ontario's system.

FRPO is reticent to suggest the best deployment of resources necessary to implement such a project: we are not in a position to make the most efficient suggestion. What we can suggest is that the necessary financial resources be made available to the LTB, for a one time project to clear up the delays. An accountability and incentive structure would need to be put in place to ensure that the project is completed within budget and that objectives are met.

Recommendation: that the government of Ontario provide the LTB with the one-time financial resources necessary to reduce the average hearing wait time from one month to one week, and that the necessary accountability and performance structure be put in place to ensure the project is successful.

Legislative Changes That Would Reduce Delays

The introduction of the RTA in 2007 resulted in some changes to the rent dispute process in Ontario. Given that this system has now had almost four years of operation, it is an opportune time to review those changes and see what kind of an impact they had, and evaluate whether or not some modification should be considered in the context of how the overall system is performing.

One change that increased the administrative burden of the LTB was to require that all applications go to a hearing, regardless of whether or not the tenant disputed the application. This was done in response to tenant activist claims that default orders lead to unfair evictions, because tenants don't have a chance for a hearing.

The table below shows the number and percentage of landlord rent-dispute/termination applications over the past year, including data on the number that were contested by tenants. This data shows that half of tenants do not respond or show up to a hearing. This percentage

has remained consistent since the RTA was proclaimed in 2007.[5] That means a full 50% of the LTB's hearing workload is unnecessary. These matters could have been dealt with administratively, and not taken up hearing time, nor incurred the delays inherent in scheduling a hearing time. This workload is currently using up LTB hearing time, when that time could be allocated to hearing issues where there is in fact a dispute. In all these cases, the tenant simply does not dispute that they have not paid the rent. This unnecessary delay increases the landlord's costs considerably: the cost of legal assistance, plus the additional lost rent due to an unnecessary delay.

There are some simple changes that could be made to the current system to address any concern that tenants retain their entitlement to a hearing if they wish. Firstly, the current respondent's letter which is sent out by the LTB could be amended to include a dispute form. This just requires a positive action by the tenant to get a hearing, the same as any other court proceeding. For any other hearing type in Ontario, whether for traffic tickets, for court proceedings, or for the Human Rights Tribunal, a response is required from those who want to dispute.

Uncontested Applications to the LTB				
October 2009 to September 2010				
Type	**Contested**	**Uncontested**	**Other**	**% Uncontested**
L1	14333	20771	6738	50%
L2	2308	1268	725	29%
L3	137	644	60	77%
L4	527	2611	234	77%
Total	17305	25294	7757	50%

Source: Ontario Landlord and Tenant Board.

Another change that could be made would be to amend the current respondent's letter to tell them that they have up to 10 days after a default order is issued to dispute the order and request a hearing. This would certainly ensure that anyone who wants a hearing would get one.

Finally, the protection remains in place that tenants can pay all arrears at any time up until the eviction point to nullify an order. So for simple arrears matters, a remedy is always available to any tenant whether they respond by filing a dispute or not.

It should be noted that making this change does not require any new provincial resources, and would not impact the fairness of the system – just make it more efficient.

[5] Time series data provided to FRPO by the LTB shows that the percentage of all application types uncontested has remained consistent since the RTA was introduced in 2007. Only more recent data was available that gave a breakdown by application type, due to the introduction of the LTB Cmore data system. However, given that L1, L2, L3 and L4 applications make up about 80% of the LTB's application, it is reasonable to assume this is a consistent trend since January 2007.

Recommendation: The RTA should be changed to require that a tenant take a positive action to dispute an application before a hearing is scheduled, to save LTB resources. Tenants should be given up to 10 days after a default order is issued to request a hearing.

Performance Objectives and Metrics for the LTB

These days, all modern organizations use performance objectives and metrics to monitor their performance and inform their management processes. In fact, it is rare for any significant organization to not use performance objectives and metrics. This includes government departments and agencies – it is by no means the exclusive domain of the business sector.

The LTB currently tracks average time from initial application to hearing date by type of application. So a metric is already in place to monitor performance in this area. What is missing, however, is a shorter goal for this time. It would also be good if there was a performance management system which rewarded achievement in this area. Currently, it is not a priority to reduce this wait time at the LTB, nor does the LTB have a stated objective to do so.

Also, it is not just averages that matter. It is the overall distribution that matters. If the average statistical wait is 22 days, but in the Toronto region more than half the applicants must wait 30 days or longer, it is still a hardship for those who have a long wait. So performance metrics should not just look at averages. They should look at the distribution of hearing delays, and how these distributions vary by office.

A related performance objective would be to monitor the productivity of individual adjudicators. The more productive each individual adjudicator can be, the better the system will be able to reduce hearing delays with existing resources. Perhaps remuneration could be influenced by the number and type of cases heard, how quickly, and on how quickly after a hearing an order is issued (something that is also already tracked).

Another element of this could be through a performance contract between the government and the Chair of the LTB. This may exist already. A performance contract between the LTB Chair and the government should make it clear that reducing hearing delays is a priority of the government, and corresponding incentives could be put in place. Even if it took time to implement this option, because existing contracts and remuneration systems cannot be changed overnight, it would be worth pursuing.

Recommendation: the provincial government, together with the LTB, should review the LTB's objectives and performance management incentives with a goal to removing any barriers to an incentive structure that would reduce delays.

Eliminate Oral Hearings for Non-Payment of Rent

When non-payment cases do go to hearing in Ontario, in the overwhelming majority of cases the tenant has not paid the rent. It is a very simple and straightforward matter. So even

though tenants are attending half the hearings, it does not make the cost of a hearing worthwhile. Some tenants in Ontario have come to believe that when they do not pay the rent, they should have an opportunity for an expensive public hearing to explain why they did not pay the rent, and perhaps hope for either forgiveness of rent or a chance to delay the process even longer to extend the time they can live for free.

Solutions to non-payment problems are simple and singular – an order requiring payment of rent. This is not a highly technical matter that requires a hearing. This has been recognized in other provinces, where in some cases hearings are not required. New Brunswick does not have hearings. And B.C. has recently changed its system to replace expensive hearings with written hearings. It is a logical system for handling rent disputes – either the rent is paid or it isn't. Holding expensive hearings to allow for excuses and venting is not productive; it is a waste of resources. If tenants have concerns with their landlord or their building, they should be encouraged to make a separate application and have those concerns heard.

There need not be any concerns about a loss of justice for tenants with a move to eliminate hearings, as such systems already exist in other provinces. They would remain entitled to respond and submit evidence in any new process. And they can always nullify the process by paying the rent. If it were ever found that a landlord falsified documents in such a process, then any such landlord would and should face serious repercussions from the justice system: fines, abatements, paying for the tenant's costs, and even a criminal record in some cases.

Recommendation: Consider replacing oral hearings with administrative hearings for straightforward non-payment issues.

STRATEGIC DELAYS

Adjournment Requests

While all systems balancing rights of stakeholders have built-in tension, the mechanisms within the RTA are too generous in providing tenants with ways to delay the hearing. Under the current system, these include adjournment requests. Anecdotal evidence suggests these are being granted almost all the time at a first request, particularly if the request is made to obtain counsel. The right to counsel is not absolute, and rent issues are usually straight-forward. However, Members almost always grant the tenant's request. An adjournment in a rent arrears case usually adds an additional 30 days in order for the matter to be brought back.

Section 82 Delays

The proclamation of the RTA saw a new provision, s.82, which allows a tenant to raise any issue at a rent arrears hearing that they might otherwise have been able to raise had they filed a paper application and paid the required fee. The LTB adjudicator is then required to hear the "*application*" as if it had been filed. The introduction of this provision resulted in yet another

mechanism by which landlords are treated differently than participants in any other Ontario legal proceedings: in all other legal proceedings that FRPO is aware of, those facing accusations in the justice system are allowed to know case they are to face.

This provision is easily abused. Tenants know that they can raise their own issues at a hearing, without having given the landlord any notice, without providing disclosure and without advising the Board of their intention. The result is often an adjournment with both the rent matter and the tenant's un-written claim returning at a later date. The adjournment is caused either by the landlord not being prepared to respond to these undisclosed allegations, or by the adjudicator presiding over the hearing docket not having enough time to hear the tenant claims which take considerably more time. But in order to schedule time for a tenant application tied to the original L1, the Board needs to schedule an hour minimum, if not more, so the return date is often 2 months away. This routine practice plays havoc with Board scheduling practices. It is vital to remember that the tenant has always had the right, and should continue to have the right to file a claim, serve the landlord with the claim at least 10 days prior to the scheduled hearing, and have his or her day in court.

The new process adds hundreds of dollars to the landlords legal and preparation costs, and thousands of dollars in additional lost rent due to delay. A key problem with this new provision is that none of these additional costs are borne by the tenant. Even if the tenant's claims are frivolous, retaliatory, and done as a delay tactic, the tenant faces no costs or consequences.

There is no requirement for Members to order the tenant to pay funds into the Board. Where Members do order prospective rent paid into the Board until such time as the matter returns, there is little the landlord or the Board can do if the tenant fails to pay as ordered, or in fact simply fails to show up at the subsequent hearing.

Recommendation: the RTA should be amended to return to the previous practice of requiring tenants to file applications. The LTB's Rules and Guidelines should be examined with the goal of advising parties that adjournments are not a de facto right, and that there are cost consequences for frivolous claims or requests for adjournment. The LTB's practices should be amended so that a landlord can bring a matter back to be heard within 5 days if the tenant fails to comply with the requirements of an interim order for payment.

TIME TAKEN TO WRITE UP ORDER

According to the most recent publicly available data, the time from hearing to order issuance in 2009 was 1.56 days.[6] Talking to FRPO members active in the Toronto area, they believe a

[6] Landlord and Tenant Board. *Annual Report 2008-2009.* Government of Ontario. June 2009. It should be noted that this information used to be more readily available and more recent in regular monthly statistical reports, but since the implementation of a new system at the LTB, these have not been available.

typical time to order issuance is closer to five days currently. Again, it may vary significantly by adjudicator.

As with the discussion in the previous section, it may be that the distribution of this delay by adjudicator should be closely monitored, and that specific performance objectives and incentive systems should be in place. If landlords who are currently waiting 5 days or longer for an order can have their wait reduced by 3 days, this is still an important improvement.

Recommendation: the LTB should monitor the time taken to issue orders by adjudicator, and incentives should be put in place to ensure timely order issuance.

11 DAY DELAY AFTER ORDER ISSUED

Currently, LTB orders give tenants another 11 days to pay after an order is issued before a landlord can apply to the sheriff for enforcement. There is no statutory requirement nor any other justification for this delay.

Tenants can nullify an application by paying their arrears at any time, whether before the hearing or after right up to the day of enforcement by the sheriff. Requiring an additional delay of 11 days is unnecessary. This practice by the LTB should be stopped immediately. FRPO has asked for this practice to stop in the past, but to no avail. If the LTB practice does not stop, the province should introduce legislative changes to prevent it.

This practice is even in place when landlords file an L4 re-application after a breach of an agreement for payment, and the Board issues an eviction order based on the tenant's failure to live up to the agreement.

This one change would be particularly beneficial in dealing with tenants who intend to stay for a long period without paying, as it would reduce overall delays by 11 days.

Recommendation: the LTB should immediately stop the practice of preventing landlords from filing with the sheriff for 11 days after an order is issued.

SHERIFF DELAYS

The system of enforcement of LTB orders by Ontario's sheriff's offices is broken.

According to FRPO members in Peel Region, they have to wait over two months after filing with the sheriff's office before the sheriff will enforce. This is unjust and inexcusable. Long delays still exist in many other areas of the province, including the largest market – Toronto.

Landlords have no choice but to use this monopoly service, and it is clear from the many years that this situation has persisted that the provincial government has no intention of addressing

this problem. FRPO is not sure why the problem continues. Sheriff's fees in Ontario are now $315, which provides sufficient revenues to provide the service.

There is a very simple solution to this problem. That is to allow private bailiffs to carry out this function. Private bailiffs currently provide this function in other jurisdictions in North America. Private bailiffs currently operate in Nova Scotia, Quebec, Alberta and British Columbia. The other Canadian jurisdictions do not have the delay problems Ontario exhibits, so it has not been an issue.

Appendix B to this document contains a recent article from the Law Times which outlines the problems plaguing the sheriff's office in Ontario. It suggests that allowing private bailiffs would address a problem that exists across all executions of property judgments due to delays and lack of resources for the sheriff's office.

Currently, the *Courts of Justice Act* requires that writs of possession be enforced by a sheriff. Section 85 of the *Residential Tenancies Act* requires that "an order evicting a person…shall be enforced in the same manner as a writ of possession". Therefore, legislative reform would be necessary to allow private bailiffs.

Given that four other provinces have been using private bailiffs for decades without any evidence of public policy concerns, there is no reason that Ontario could not allow this option in order to fix Ontario's broken system.

Another injustice in the current system is that in certain regions, the Sheriff's office will put an eviction application back to the end of the line when an order that is days from enforcement has been stayed by the tenant filing a request for review, and the stay is subsequently lifted. It has become a tactic of unscrupulous tenants to file reviews lacking in merit, at times not even showing up for the review hearing, knowing that by filing the review, an additional one or two months is gained. The rules should be changed so that when a stay is lifted, the order lifting the stay is given priority enforcement.

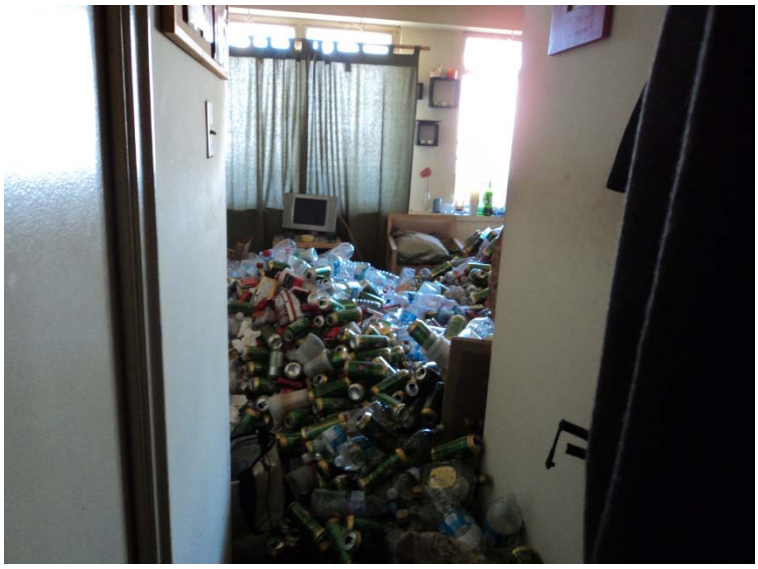
Recommendation: amend provincial laws (either the *Courts of Justice Act* or the *Residential Tenancies Act)* to explicitly allow private bailiffs to enforce LTB orders and to require orders that had been previously stayed to be placed in priority sequence.

RELATED ISSUES

Damages and Prohibition of Security Deposits

Many tenants choose to retaliate when faced with an eviction proceeding, and inflict significant damage on the rental complex. This is particularly true of troublemaking tenants who are being evicted because they are disturbing the quiet enjoyment of other tenants. With a process length of three months, a disgruntled tenant has three months to cause damage to the rental complex. The length of the eviction process exacerbates this problem in Ontario.

Example of a recently vacated unit in Ontario



Opposite is a picture of the condition of a unit after a recent tenant departure in October of 2010. It is not an unusual scenario in Ontario due to the prohibition of damage (or security) deposits. Damages can range from the tenant leaving a mess for the landlord to clean up, like that shown in the picture, to physical damage to the unit and the complex. On average, these damages costs hundreds of dollars in clean up and repairs, and sometimes costs thousands of dollars.

In Ontario, landlords are not allowed to collect damage/security deposits. Therefore, only recourse available to a landlord for damages in the eviction process is to attempt to take the tenant to court. Firstly, the costs of going to court make this uneconomic in most cases. Secondly, the cost of tracking down a tenant after they leave also makes this very difficult in most cases. While it is true that tenants can be held responsible for damages under the RTA, in rent dispute proceedings this becomes irrelevant: you can't even collect rent from the tenant, and the landlord has already been forced into a rent dispute proceeding. Once the tenant has left, the landlord no longer has recourse to the LTB, making an attempt to apply for damages in these circumstances irrelevant. In the vast majority of cases, landlords bear the cost of repairing damaged units, and in turn must pass these costs on to other tenants.

This problem can easily be resolved by allowing damage deposits. If last month's rent was allowed to be a damage deposit, landlords would have leverage against tenants who are causing damage. Given that many other jurisdictions in Canada allow damage/security deposits, they are obviously feasible in Ontario. Quebec is the only other province in Canada that does not allow damage deposits.

Recommendation: amend the RTA to allow damage deposits equal to one-month's rent.

Witnesses in Eviction Proceedings

Landlords commonly need to attempt to evict a tenant who is disturbing the quiet enjoyment of other tenants, often at the request of other tenants. In order to successfully evict these tenants, it is necessary to provide evidence that the tenant has been disturbing other tenants.

Unfortunately, the current practice of the LTB is to require that any such evidence be given by witnesses at an LTB hearing. The LTB will not accept affidavits from neighbouring tenants. This is a huge problem. Most commonly, other tenants are afraid of the tenant causing the disturbance, and will be unwilling to testify out of fear of retaliation. Therefore, the current practice makes it too difficult to evict disturbing tenants.

Recently, a FRPO member had one of its tenants testify to the disturbing behaviour of another tenant. As per the LTB's requirements, the tenant was forced to openly testify at the hearing. At the hearing, the tenant subject to the application threatened the witness, indicating that he would "get even" and "I know where you live". This is not an uncommon occurrence in these situations.

Recommendation: the LTB practice of requiring the physical presence of witnesses in disturbance and eviction hearings should be stopped immediately.

THE COST OF DELAY

The costs of delay in Ontario's rent dispute process are significant for residential landlords. There are costs of time, money, justice, and faith in Ontario's system. The table below summarizes the typical costs incurred by a landlord in dealing with a non-paying tenant. The types of losses include the following:

- **Lost rent due to delays:** the average rent in Ontario is now $900 per month. Three months of revenue losses equals $2,700. However, this is merely an average. For some landlords, they may be losing $2,000 per month or more for a large apartment in a prime location. Given the 3 month process in Ontario currently, lost rent during the delay period is an additional $2,700.
- **LTB Application fee:** $170 for an L1.
- **Legal/Agent Fees:** typically these fees are about $360. For those landlords who try and represent themselves (not recommended), they must take a day off work, so the cost is incurred in either fees, or lost time and productivity.
- **Sheriff's fee:** if the sheriff needs to enforce, this is $315, but can be more if there are complications or multiple visits required.
- **Landlord's time to administer:** the landlord must expend a considerable amount of time in Ontario managing the lengthy and complicated process. It may also include the time needed to attend the hearing, or the time of staff. A dollar figure is not put on this cost, but it would be significant
- **Damages:** Ontario's long and confrontational system gives tenants a long time to retaliate against their landlord, costing hundreds of dollars in damages and cleanup costs.
- **Re-leasing costs:** since the unit cannot be leased until you are certain that the existing tenant is gone, the landlord cannot begin offering the unit for rent until the day the sheriff enforces. Given that it would take typically a month between the time of advertising and the time that a new tenant may be able to move into a unit,

the landlord will incur a loss of at least one month's rent in foregone revenue. This revenue cost is often not incurred for tenants who leave normally, with two month's notice – this gives the landlord time to find another tenant who can move in shortly after the current tenant leaves. In addition, there will be advertising costs for the unit.

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+

As mentioned in the "Strategic Delays" section above, if the tenant uses an adjournment request or Section 82 of the RTA in the process as a delay tactic, this extends the process by at least an additional month, adding to the landlord's rental losses. This also adds legal and preparation costs. If these additional delays occur, it raises the losses shown in the table above to $6,445+.

THE IMPACT OF EVICTIONS

The City of Toronto undertook a detailed study of evictions in Toronto only for a 2004 study.[7] The study surveyed both landlords and tenants about the eviction process. As we have discussed above, the process is very stressful and financially costly for landlords in Ontario.

Tenants also found the eviction process to be stressful. However, there was nothing in the study that demonstrated that Ontario's long drawn out process helped reduce stress for these tenants. In fact, while there may be instincts by tenants to try and drag out the process, they may actually be making things worse for themselves – "digging a bigger hole" so to speak. As they let the arrears and legal costs of the landlord increase, it means that their credit rating and the ability to repair it is much worse. This affects their future.

Another interesting aspect of the Toronto study was the survey of tenants who had ultimately left or been evicted by the sheriff. The study found that 58% of those who had been evicted felt that the quality of their housing had improved. Another 13% thought that the quality of their housing had stayed the same. The study also found that on average, those evicted reduced their housing costs significantly. For many tenants, out of necessity, they needed to make a better match between their ability to pay and their cost of accommodation.

[7] Linda Lapointe, Lapointe Consulting Inc. in association with Sylvia Novac and Marion Steele, *Analysis Of Evictions Under The Tenant Protection Act In The City Of Toronto*, prepared for City of Toronto Shelter, Housing and Support Division, Community and Neighbourhood Services Department, March 31, 2004

Allowing Large Arrears to Develop

Ontario's long and drawn out process is actually bad public policy. Ontario's system allows, even encourages, tenants to get themselves into extreme financial difficulty. By extending the process, it makes it much more difficult for tenants to fix their situation. Since the majority of tenants subject to arrears applications ultimately end up staying in their apartment, they would be better served by a system that addressed arrears problems quickly. Ontario's current system is not benefitting tenants.

In Alberta, a tenant may face a hearing within two weeks of missing a rent payment. The cost to clear up the issue in Alberta would only be a half a month's rent plus any further arrears. In Ontario, by the time a tenant gets to a hearing, they would owe two month's rent plus further arrears, in addition to being given additional time to pay after the hearing. It is a much bigger challenge to address the problem in Ontario at this point than in Alberta.

Impact on Housing Opportunities and Availability for Risky Households

One of the biggest impacts of Ontario's excessively long system is that it causes landlords to be extremely cautious, out of necessity. Many landlords have told FRPO that they would rather leave a unit empty than rent it to a tenant who might be considered "risky". Because it takes so long to get rid of a problematic or non-paying tenant, it is not worth the risk for some landlords to take a chance on someone with, for example, a poor credit rating who is trying to turn their situation around.

So rather than being a policy that helps tenants, Ontario's current policy hurts a great many tenants. The current policy makes it more difficult for vulnerable households to secure housing in Ontario. Therefore, the policy is counter to the province's affordable housing objectives. If Ontario's process were not so broken, most landlords would be happy to fill a unit by taking a chance on a household which does not meet normal screening criteria, rather than leave the unit empty.

CONCLUSION

Altogether, the evidence suggests that Ontario's rent dispute process is broken and unfair. Delaying the process of justice has not proven to be beneficial, and may in fact be harmful to tenants. It is most certainly harmful and unjust to landlords. Other jurisdictions have proven that the process does not need to be as long as it is in Ontario.

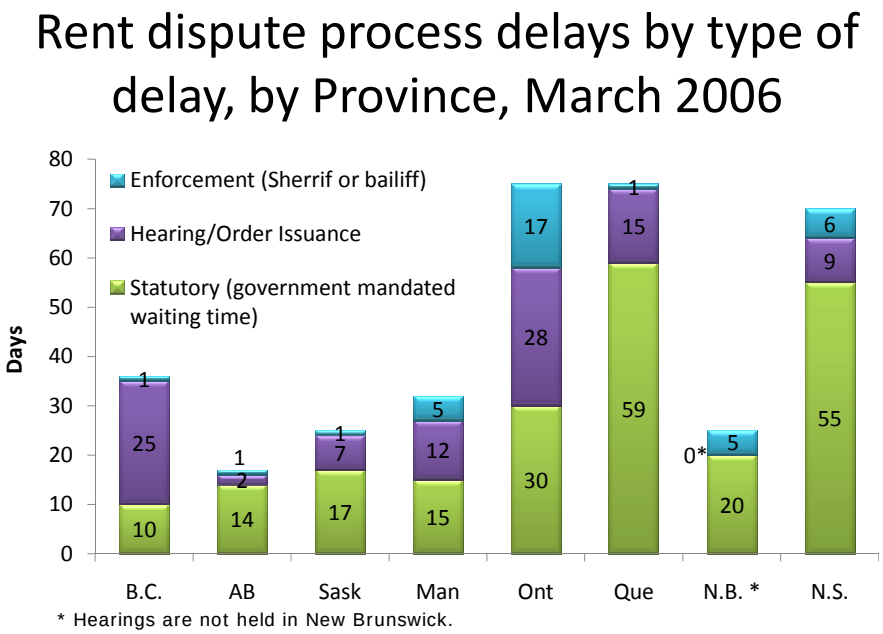
Over the years, with successive changes to Ontario's legislative and regulatory regime, the system has evolved and grown into one which allows a small but growing minority of tenants to deliberately abuse the system. Awareness is increasing among tenants that it is easy to take advantage of the system and live for free. This drives up housing costs for all other tenants who are paying their rent, including those struggling to make rent payments.

Ontario's rent dispute system is long overdue for modernization. Past reforms have not looked at this issue seriously, and have been very politicized. FRPO believes that a serious review is possible, and that fears of negative political consequences from tenant voters are unfounded. Tenants would be strongly supportive of a fair system. And all the polling evidence suggests that this is not an issue that drives tenant voters – because the vast majority of them pay their rent, and in fact are the victims themselves of an unfair system, because they ultimately bear its cost.

Several recommendations have been made in this paper that would make Ontario's process more efficient and that would improve justice.

APPENDIX A: DISPUTE PROCESS TIMEFRAMES ACROSS CANADA

In March of 2006, FRPO conducted a survey of landlords and landlord associations across Canada. In the survey, FRPO asked how long it would take to go through the rent dispute process with a tenant who was not paying rent, and who will not leave until all steps in the process are utilized including execution of an order by a sheriff or bailiff. The results of the survey are shown in the chart below.



Source: FRPO survey of landlords and rental housing industry associations across Canada, March 2006.

The survey identified the number of delays in the process by the type of delay:

- **Statutory delays:** these are legislated delay, where the landlord is required by legislation, regulation or practice to wait before taking any action;
- **Hearing / order issuance delays:** these are the number of days a landlord has to wait for a hearing as part of the process, or for an order following the hearing; and
- **Enforcement delays:** these are the number of days a landlord typically waits for either the sheriff to enforce, or for a private bailiff to enforce in those jurisdictions where this is allowed.

In some jurisdictions, there is more than one process that can be followed. In these cases, FRPO asked survey respondents to give us the timeframe for the process they most commonly use. For example, in Quebec, there are three different approaches one can take to a non-payment situation. Alberta has two options: the Queen's Bench or provincial court.

In the survey, Ontario, Quebec and Nova Scotia stand out has having the longest timeframes. The remaining five provinces have process lengths which are dramatically shorter, ranging from

one fifth to one half the length of the Ontario process. In looking at the survey results, certain things stand out:

- The process is long in Nova Scotia and Quebec entirely due to statutory delays.[8]
- Ontario's statutory delays are the third longest in the country.
- Statutory delays in B.C. are 10 days, versus 34 in Ontario and 59 days in Quebec, showing a huge variance across the country
- Hearing delays are by far the longest in Ontario, with B.C. being the only other province to rival Ontario for such long hearing delays in 1996. Since then, B.C. has reformed its process and has dramatically reduced delays
- New Brunswick does not even have hearings, demonstrating that a process can be designed without hearings
- Enforcement delays are by far the longest in Ontario, where landlords are forced by legislation to use the sheriff's office
- In Quebec, Alberta and British Columbia, where private bailiffs are allowed, enforcement delays are not an issue
- Looking at the overall results, five provinces demonstrate that a shorter process is clearly possible and achievable

Since this survey was done, the government of British Columbia reformed its process. These reforms took effect in January of 2009. Discussions with one of FRPO's sister associations in B.C. (ROMS BC) suggest that the entire process in that province now takes only 18 to 20 days in total. One key change in B.C. was the elimination of oral hearings for non-payment matters. The B.C. process is now called a Direct Request process. With respect to timing, it can be summarized as follows:

- All or some of rent not paid on the 1st
- Notice to End Tenancy issued on the 2nd
- If rent remains unpaid on 7th, landlord applies for an Order of Possession and gets package from RTB
- Files proof of service by the 10th
- A Dispute Resolution Officer holds a "written" hearing; if all documents in order, landlord receives order of possession by the 18th to 20th of the same month
- Tenant required to vacate within two days following service.[9]

It should be noted that the current Nova Scotia government has introduced proposed reforms to the *Residential Tenancies Act* that are expected to dramatically reduce the length of the eviction process in that province.[10] The reforms currently before the N.S legislature will allow a landlord to issue a 15 day notice to vacate after a tenant is 15 days in arrears. If a tenant wants

[8] In Nova Scotia, for example, one must wait until the tenant is 30 days in arrears before you can serve a 15 day "Notice to Vacate" and apply to the Director of Residential Tenancies for a hearing. After the hearing, you must wait another 10 days to allow the tenant to dispute before you can apply for an executable order for possession.
[9] Source: Al Kemp, CEO of the Rental Owners and Managers Society of British Columbia (ROMS BC), January 20, 2011.
[10] Bill 119, *Residential Tenancies Act (amended),* was given first reading on November 29, 2010. http://nslegislature.ca/legc/bills/61st_2nd/1st_read/b119.htm

to dispute, they have an obligation to apply for an accelerated hearing which will be provided within 5 days. Altogether, this means that if the tenant does not dispute, the landlord will be entitled to enforce an order after 30 days, and after 35 days if the tenant does dispute. This will cut the process time in N.S. by more than half.

Private bailiffs would help fix system

BY JENNIFER McPHEE
Law Times

Appointing private bailiffs to enforce court-ordered personal property seizures or executions of property judgments would help fix the current system, which is ineffective and problem-plagued, say some Ontario lawyers.

"When it comes to seizing physical assets or having someone try to take cash, the whole system completely breaks down," says lawyer Kevin Fisher, an executive-member-at-large of the Ontario Bar Association's civil litigation section. "The problem is, you get these habitual offenders who know this, and they just thumb their noses at the system, and basically you have no enforcement."

Part of the difficulty is the length of time it takes to get orders enforced, which is caused by a lack of resources in sheriff's offices throughout Ontario.

The solution: the Ministry of the Attorney General should assign private bailiffs to enforce court-ordered personal property seizures or executions of judgments involving personal property, he says.

The sheriff's officers in Ontario's enforcement units are bogged down by one of their other functions — enforcing tribunal-ordered rental evictions for landlords, says commercial litigator Paul Voorn, an executive member of the OBA's civil litigation section, who along with Fisher has lobbied the Ministry of the Attorney General to fix the problem.

Voorn says he waits one or two weeks for sheriff's offices in Ontario to enforce judgments. And Fisher, whose practice includes enforcing federal judgments across the country, says he has waited six months or longer after giving a requisition to enforce to sheriff's offices in Ontario.

"My experience is that I've been getting very effective enforcement across the country, but not in Ontario," he says.

Provinces including British Columbia, Alberta, and Quebec have very effective systems because these provinces allow private bailiffs to enforce judgments against debtors for the repossession and seizure of personal property, say Fisher and Voorn.

But in Ontario, only sheriff's officers authorized by the ministry can carry out this job, they say.

When sheriff's officers in Ontario do go to a business to enforce a judgment, they often don't get the job done, says Fisher.

Fisher often asks a sheriff's office to seize cash from the register of a bar, restaurant, or nightclub in order to make a point because the business has been illegally airing live sporting events, and has not responded to litigation or has ignored an injunction.

"They'll go in and they won't really do anything," he says. "They'll say, 'Do you have anything?' They'll spend 30 seconds in that particular bar."

And, despite asking them to go to the business at a time when the cash register is likely to be full, the officers will often show up in the middle of the afternoon when it's empty, he says.

"[Creditors] pay for this," says Fisher. "We are kind of a client in a way. If I was paying a bailiff to do it, we'd get results. We are paying significant fees."

Another problem stems from the fact that sheriff's offices in Ontario require creditors to give the office an address for the goods or assets to be seized several days in advance of a seizure, says Voorn.

But because these goods are frequently mobile or in transit, they have often been sold, hidden, or moved by the time the sheriff's officer arrives, says Voorn.

"You can imagine the trouble a creditor, who has leased 20 vehicles to a debtor, would have in trying to get these vehicles repossessed through the sheriff's office if they need to let them know days in advance where the vehicles are," says Voorn. "They could be anywhere."

Sheriff's officers also work during business hours, and creditors often need someone to collect

The system "breaks down" when it comes to seizing physical assets or having someone to try and take cash, says Kevin Fisher.

assets at odd hours, says Voorn. It takes a long time for sheriff's officers to get approval to work overtime, and once they do get approval, the creditor covers the cost of the overtime, says Voorn.

But private bailiffs work around the clock and can act extremely quickly, says Voorn.

"You call up a private bailiff, and you can say, 'I found the vehicle, it's at this location.' They'll say, 'I've got the tow truck, I'll be there in half an hour.' "

"They just have so many more tools available to them to assist a creditor in conducting a seizure, whereas the sheriff just simply says, 'You provide me with the address and I'll go there,'" says Voorn.

Fisher says bureaucratic red tape also plagues the enforcement system in Ontario, although some changes have been made because of his complaints.

In one situation, he asked a sheriff's office to enforce a judgment against a bar with a name that ended in "Ltd." He received a report that stated the office would not enforce the judgment because the name of the bar on the judgment was different. The difference was that the judgment spelled out the word "Limited," says Fisher.

"That drove me almost insane," he says.

In another situation, Fisher asked one of the enforcement units to enforce a judgment by seizing the assets of a business that was a partnership.

"Under the rules of civil procedure, you can seize the assets of the partnership, but they wouldn't do it unless I went back and got a judgment against all the individuals in the partnership," he says.

"I actually photocopied the page from the rules and sent it to them, but it didn't make any difference," he says. "There are lots of these kinds of things."

Both Fisher and Voorn are quick to point out that none of these problems are the fault of the sheriff's officers.

The ministry's policies tie the officer's hands in various ways, they say.

For instance, the government requires the officers to remain "neutral" and not take the side of the creditor, and because of that, the debtor will often leave if a debtor disputes a seizure, says Voorn.

See *Officers*, page 16

Officers frustrated by system

Continued from page 15

But there is already a process whereby the debtor can oppose a seizure if something was done incorrectly, says Fisher.

Fisher says that many officers have told him they are equally frustrated by the system.

Until about one year ago, Voorn and those lawyers that deal with the Personal Properties Security Act could circumvent these problems by asking a judge to grant them an order authorizing a private bailiff to go onto a property and repossess goods.

The Courts of Justice Act states that a sheriff will enforce a repossession order unless another act provides otherwise, says Voorn, but the Personal Properties Security Act states that a creditor can repossess by any means available at law.

So when a secured creditor had a security agreement with a debtor and the debtor defaulted under the agreement, Voorn would often get such an order from a judge.

But then the registrar of bailiffs — who licenses private bailiffs in Ontario — put a stop to this by stating that bailiffs will lose their licences if they seize goods under a court order because they are not allowed to do so under the Courts of Justice Act.

"That's fair," he says. "But of course what the creditors and their lawyers lost was a very effective tool to get a judge to make an order that a private bailiff could go in and seize," says Voorn.

Voorn and Fisher have met with ministry staff twice about their concerns.

They asked the ministry to appoint qualified bailiffs as sheriff's officers. These officers could work on a contract basis for the government to fill in gaps in staffing, says Voorn.

They also suggested that the government test the waters through a pilot project by appointing private bailiffs to enforce Small Claims Court judgments in one of the judicial districts in Ontario.

The meetings with the government were productive, and ministry staff promised to look into whether to solve the problem by hiring more officers or whether to appoint private bailiffs, says Voorn.

If the government hires private bailiffs on a contract basis, the union will need to be consulted, points out Voorn.

Another change that Fisher would like to see involves allowing what's known as "constructive seizure."

When some other provinces seize assets, they give the debtor notice that everything will be sold unless the debtor settles the judgment or deals with the creditor in some other way, he says.

But in Ontario, the assets are immediately taken to an auction and sold, says Fisher.

Constructive seizure gets the debtors' attention, which is what creditors — those that aren't trying to repossess specific goods — want, he says.

The creditor doesn't really want to sell the goods, because they are worth more to the debtor than they are on the open market, he says.

And not only does constructive seizure motivate the debtor to resolve the issue in the vast majority of situations, but it also has a domino effect, because other local businesses hear about it, says Fisher.

"It usually stops the problem locally," he says. "You end up spending fewer resources by clients, and within the court system it's just more effective. You don't have to keep sending someone back and back and back."

Right now, many debtors in Ontario know they can operate "just below the radar," says Fisher.

"It's almost like fraud because they can get away with it," he says.

"They can run up a big credit card debt and never have to worry about anybody really getting them because, even if there's a judgment against them, there's no way anyone can ever collect or get the goods — not without a tremendous amount of expense and bureaucratic problems."

Both Fisher and Voorn stress that the sheriff's offices throughout Ontario are fairly effective when it comes to their other roles — garnishing wages or the bank accounts of debtors, and handling writs of sale and seizure binding real estate owned by debtors. It's only the enforcement of personal property that's causing all these problems, they say.

A ministry spokesperson did not return phone calls. LT