

EVICCTIONS

WHAT CO-OPS NEED TO KNOW



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Transition from the old system

A new eviction system for housing co-ops came into force on June 1, 2014. The new law made changes to the *Co-operative Corporations Act* and the *Residential Tenancies Act (RTA)*. Most evictions will now be handled by the Landlord and Tenant Board (LTB) after the co-op's internal process is done. In a few cases where the grounds of eviction are not in the RTA, the courts will still hear the case.

Evictions: What co-ops need to know is an educational series to help Ontario co-ops understand and work with the new eviction system. Check other issues in the series for more details on the new system. Each issue is posted on the Ontario eviction system webpage on the Resource Centre. The page can be accessed from the Ontario Region homepage on the CHF Canada website (www.chfcanada.coop).

This issue of *Evictions: What co-ops need to know* deals with the transition from the old eviction system to the new system.

Evictions started in court before June 1, 2014

This section applies if your co-op completed the internal eviction process under the old system and **filed a court application** before the new system came into force on June 1.

We applied to court before June 1, 2014. Will we have to start over?

No. If the co-op filed a court application before June 1, 2014, it can continue that application to the courts.

If we want to, can we start over at the Landlord and Tenant Board?

Yes, if the co-op actually filed a court application. This is stated in the changed *Co-operative Corporations Act*, subsection 171.12(3).

Transition

- (3) If a non-profit housing co-operative has made an application for a writ of possession under this Act and the court has not made a determination on that application before the day this subsection comes into force, the co-operative may,
 - (a) continue the application; or
 - (b) if Part V.1 of the *Residential Tenancies Act, 2006* applies, discontinue the application and follow the procedures under that Act to apply to the Landlord and Tenant Board for an order terminating the member's occupancy of the member unit and evicting the member.

If we start over at the LTB does this mean we would have to issue a new Notice to Appear?

No. You would have to give a notice of termination of occupancy under section 94.2(1) of the RTA and file an Application to the LTB. In some cases, this would give the member the right to cure the default.

Why would we want to do all this instead of just going on with the court?

Court applications could still take a lot more time. It depends on how far the court application has gone and what part of

Ontario you are in. In some areas it takes a long time to get a court date, so the co-op could save time by going to the LTB.

Also, it may depend on how complicated the case is. Co-ops have to work with their lawyers to decide this.

Does this apply to all evictions?

No. Evictions for grounds not in the RTA will still have to go to court and you should continue the court application if it is one of those.

No court application before June 1, 2014

This section is about what to do if your co-op **has not** filed an application in court before the new system came into force on June 1.

Do the above rules apply if we did not file the court application by June 1, 2014?

No. The co-op has no choice about the external process. It will have to go to the LTB if the grounds for eviction are in the RTA. In other cases it will have to go to court.

The board made an eviction decision before June 1 under the old system but didn't start in court. The member did not appeal to the membership. Can we apply to the LTB?

Yes. If you didn't start in court before June 1, you are required to go to the LTB if it is the kind of grounds that are in the RTA. Any steps the co-op takes from June 1 onwards will have to comply with the new law.

Our board decided to evict a member before June 1 and the member appealed. Can we go ahead with the appeal?

Yes. You need to continue to follow any provisions in your Occupancy By-law about eviction appeals. The changes to the *Co-operative Corporations Act* no longer require co-ops to allow appeals of board eviction decisions. This decision is up to the co-op and needs to be stated in the co-op's by-laws. Since the old Occupancy By-law allowed appeals of all eviction decisions, co-ops will need to continue to allow appeals until they change their Occupancy By-law.

Can we wait to issue the Notice to Appear until we pass the new Model Occupancy By-law?

It might be better to wait until then before issuing a Notice

to Appear. But this will take time and you may need to evict before you pass a new by-law. The new Model Occupancy By-law will have to be considered and filled in for your co-op, passed by the board and confirmed by a two-thirds vote at a members' meeting.

The new Model By-law is available and can be downloaded from the *Ontario's Eviction System* page or the *Forms, by-laws and more* page on the Resource Centre on CHF Canada's website (www.chfcanada.coop). You should get the Guide at the same time.

Can we issue a Notice to Appear without passing the new Model Occupancy By-law?

Yes. See *Evictions: What co-ops need to know* Issue 2. *Before the co-op passes a new Occupancy By-law.*

We issued a Notice to Appear for a board meeting on May 21. It has been postponed several times. Should we reissue it with the new forms?

Yes. That would be best. It will avoid any difficulty later on.

You can follow the instructions in *Evictions: What co-ops need to know*, Issue 2. *Before the co-op passes a new Occupancy By-law.*

Our board made a conditional eviction decision a couple of months ago. What happens if the member breaks the conditions after June 1?

In theory, the co-op can just go ahead with the eviction at the LTB. We suggest you check with your lawyer.

There are complications in the transition from the old eviction system to the new system. It isn't always simple. Until you have the new Model Occupancy By-law in place, you should check with your lawyer about the kind of situations discussed in this issue of *Evictions: What co-ops need to know*.

For more information on the eviction system please contact **Diane Miles, Judy Shaw** or **Keith Moyer** at the Ontario Region office at 1-800-268-2537. Or email dmiles@chfcanada.coop, jshaw@chfcanada.coop or kmoyer@chfcanada.coop. In southwestern Ontario, call **Denise McGahan** at 1-800-644-3949, or email dmcgahan@chfcanada.coop.

Warning: The co-op should not use this information instead of legal advice. Co-ops and situations are different from each other and people understand things differently. This issue of *Evictions: What co-ops need to know* assumes things that may not be true of your co-op or your situation.