



Completing the Co-op's Internal Eviction Process, Electronic Participation and Serving Documents

This issue of *Evictions: What co-ops need to know* deals with important issues if your co-op is doing an eviction. The advice in this document assumes your co-op is using up-to-date Occupancy By-laws that align with the eviction procedure prescribed by the CCA (Co-operative Corporations Act). In this issue, we cover your co-op's internal process, rules around serving documents and the Notice to Appear meeting. See issue number 8 for making initial applications to Tribunals Ontario and the Landlord Tenant Board (LTB).

Most co-op evictions in Ontario are handled by the Landlord and Tenant Board (LTB). The LTB is part of **Tribunals Ontario** and plays an important role in the administration of justice. Once a co-op's internal eviction process is complete, if the grounds for eviction are in the Residential Tenancies Act (RTA), the LTB will hear the case. In cases where the grounds are not in the RTA, the Superior Court will hear the case.

Evictions: What co-ops need to know is an educational series to help Ontario co-ops understand and navigate evictions and the LTB eviction system. Check other issues in the series for more details on both the co-op's internal processes for properly evicting a member and how to enforce an eviction using LTB procedures. These tip sheets can be found in CHF Canada's online Member Resource Centre at chfcanada.coop/resources.

The Co-op's Internal Eviction Process:

Before the board of directors can decide to evict a member, the co-op must complete the eviction process outlined in the co-op's Occupancy By-law--starting with giving the member a **Notice to Appear (NTA)** at a board meeting.

Generally, there are 3 parts to every eviction: A by-law breach, the co-op's internal eviction process and the external eviction process as outlined by the RTA. The co-op's by-laws must state that the breach in question is grounds for eviction (this can be a general statement) and the breach must be significant enough to warrant eviction (the steps to properly evict a member are outlined in more detail in Issue 3 of **Evictions: What co-ops need to know**. Once the internal steps are completed, and the member has not moved out by the

termination date stated in the eviction decision by the board of directors, the co-op can give the member a ***Notice of Termination of Occupancy Rights*** under the RTA.

Evidence for Notice to Appear

It is helpful to have written evidence for the Notice to Appear. This could be the ledger (for arrears) or complaints from other members (for behaviour issues). For any written complaints, the co-op should provide the details to the member in advance of the Notice to Appear, so they can respond. It is important to have a good basis of evidence for the Notice to Appear. This is because at the Landlord and Tenant Board it will be very important for the co-op to have witnesses to testify as to what happened.

Human Rights

The co-op's internal eviction process and proceedings before the Landlord and Tenant Board must comply with the Human Rights Code. This often comes up when the member's behaviour is connected to a ground protected by the Code. For example, if the grounds for proceedings against the member is hoarding in their unit (as hoarding is a disability).

If the co-op knows or has reasons to suspect that the member's behaviour is connected to a ground protected by the Code, it must take steps to address any possible accommodation of the member before or as part of the eviction process. There are workshops and materials about this in CHF Canada's online Resource Centre and at your local co-op federation. We also recommend that your co-op adopt the Sector Model Human Rights By-law.

Preparing the Notice to Appear

When preparing the Notice to Appear, confirm if there is a right to appeal to the members, that the termination date is correct, and that the notice includes details of the issues Notice to Appear so that the member has the details of what the issues are.

Electronic Participation

After the pandemic, the Co-operative Corporations Act (CCA) was permanently updated to allow electronic participation in meetings of the board and members. When it comes to evictions, Article 18: Electronic Participation has been added to the Sector Model Occupancy By-law, 18.1 a) Notice to Appear. It states:

The other tip sheets in this series give your board advice on specific issues that will or could come up as the co-op works on evictions. This information is provided to help the board do its job. While the manager will end up doing most of the work referred to, it is important that the board works with staff as a team and provides clear direction.

Requirements for **Electronic meetings**

- If electronic attendance is allowed or required, the Notice to Appear (NTA) must state how the member and the member's lawyer or other representative can connect and participate.
- People who attend must be able to reasonably participate in the meeting (that is, be able to communicate with each other simultaneously and instantaneously) and are considered present at the meeting for all purposes.
- The board may permit a member or a member's lawyer or another representative to participate electronically on request, even if electronic attendance was not stated in the Notice to Appear (NTA). In that case, details on connecting and participating should be given within a reasonable time frame before the meeting.
- If the member does not have a computer or internet access, the co-op should provide a private space with a computer where the member can access the meeting online.

Suggested process for the Notice to Appear meeting

We suggest that first, the manager presents the reasons the member has been brought to the board, summarizing what was stated in the Notice to Appear. Then, the member or their representative presents their side of the story. Each side can have witnesses attend the meeting to present what they saw. Witnesses should only attend when giving their evidence. The board and the member can also ask questions to better understand the issues and get additional information. Then the board asks the member and their representative to leave and makes a decision.

If the board decides to evict, notice of the decision must be delivered to the member within the time stated in your Occupancy By-law, and in any case, no later than 10 days after the meeting.

Serving documents to the member

The Co-operative Corporations Act lists the following ways to deliver Schedule D, Notice to Appear, and other eviction documents to the member. Take care to record when, how and by whom notices are delivered. Methods of delivery include:

- Handing the notice to the member.
- Handing the notice to an adult in the member's unit.
- Leaving the notice in the mailbox where mail is ordinarily delivered to the member. This must be where Canada Post delivers the mail and not an internal mailbox. (Note: Canada Post is not authorized by law to put anything in a member mailbox without postage.)
- If there is no mailbox, sliding the notice under the door of the member's unit or through a mail slot in the door or leaving it at the place where mail is ordinarily delivered to the member
- Mailing the notice to the last known address where the member lives or works. It is considered delivered on the fifth day after the day of mailing.

You do not have to check that the member isn't present before putting something in the mailbox or under or through the door.

Note: Co-ops cannot serve documents by posting them on the door of a unit.

Some potential problems to consider when serving documents

- If the mailbox is a typical apartment mailbox, the post office may claim that it is the only one that can put something in the box. The law is not clear, but we think it is OK if the co-op puts something through the slot in the door of the mailbox of the member. If the mailbox of the member does not have a slot, then use one of the other methods.
- If there is no mailbox, or the co-op can't get access to it, the co-op can put a notice through a mail slot in the unit door if there is one.
- Or the co-op can slide the notice under the door—but this could be affected by weather-stripping.

More tips

The other tip sheets in this series give your board advice on specific issues that will or could come up as the co-op works on evictions. This information is provided to help the board do its job. While the manager will end up doing most of the work referred to, it is important that the board works with staff as a team and provides clear direction.

Co-ops will have to consider whether they should give notices by mail. Note that documents are not legally "delivered" until the fifth day after mailing, but there may be enough time to do this. A Notice to Appear will have to be mailed at least 15 days before the board meeting and the notice of eviction decision will have to be mailed within five days after the board meeting (unless your by-laws require that the eviction decision be delivered sooner).

For more information on the eviction system please contact:

CHF Canada, Ontario Region Office: 720 Spadina Avenue, Suite 313, Toronto ON, Canada M5S 2T9
Phone: 416-366-1711 | Toll-Free: 1-800-268-2537 | Fax: 416-366-3876 | info@chfcanada.coop

[@chfcanada](https://www.chfcanada.coop)      www.chfcanada.coop

For more resources in this series, visit chfcanada.coop/OntarioEvictionsSeries

Disclaimer: 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.