



Making the most of the Case Management Hearing

When an application is filed with the Landlord and Tenant Board (LTB), the first hearing is a Case Management Hearing. This issue of *Evictions: What co-ops need to know* gives advice on what co-ops can expect from the Case Management Hearing and how to prepare.

Evictions: What co-ops need to know is an educational series to help Ontario co-ops understand and navigate evictions and the Landlord and Tenant Board (LTB) eviction system. Most co-op evictions in Ontario are handled by the LTB which is part of **Tribunals Ontario** and plays an important role in the administration of justice. These tip sheets can be found in CHF Canada's online Member Resource Centre at chfcanada.coop/resources.

What is Case Management?

The LTB describes Case Management as having two purposes. First, a **Case Management Hearing** provides an opportunity for parties to explore settlement of the issues in dispute, usually with an LTB Hearing Officer trained in dispute resolution. Second, if parties are unable to resolve all the issues in dispute, the LTB will make directions to facilitate a fair, just and expeditious **Merits hearing**.

When a settlement is not reached at the Case Management Hearing, the LTB will try to identify any agreed facts and clarify issues for the Merits Hearing such as witnesses, disclosure of materials and so on. They will also deal with any conditions that are necessary for a fair Merits Hearing. For example, the member may need a sign language interpreter.

The Merits hearing is a hearing where the co-op must prove its case that led to eviction and the member must show it would be unfair to evict. Each side can present their evidence and arguments. Even if there is enough evidence to evict, the LTB is required to consider the overall fairness to the member and the co-op before making a decision.

Be prepared to reach settlement

The LTB encourages co-ops and members to come to the Case Management Hearing prepared to consider settlement.

- Where a settlement is reached, the LTB will generally issue a Consent Order that incorporates the terms of settlement and disposes of the application. For example, if the member and the co-op agree on repayment terms, the order will contain the terms of repayment that the member needs to meet to be able to stop the eviction from going forward.
- Sometimes, when parties don't agree on all issues they may instead arrive at a Mediated Agreement and the Hearing Officer or LTB Member will issue an order based upon the agreement reached during the Case Management Hearing.
- All discussions about settlement are confidential. However, Orders issued will incorporate any terms of settlement, and agreed statements of facts by parties are admissible at Hearings.
- It is important that any Consent Order or Mediated Agreement state that it can be enforced under section 94.11 of the Residential Tenancies Act (RTA). If that is in the order or settlement and the former member breaks one of the conditions the co-op can file with the LTB for an eviction, without any notice to the former member.
- If a Consent Order is issued or Mediated Settlement reached, the Merits Hearing will be cancelled.

At the Case Management Hearing

- Attendance is required
- Be on time as the hearing is usually only scheduled for one hour
- If the co-op member does not attend and the eviction is based on arrears or persistent late payment, the hearing will take place without them*
- If a co-op does not attend or send a representative the case will be dismissed
- Ideally, the board will have had a discussion before the hearing and have told the co-op's representative what the co-op wants. The co-op's representative can then prepare the terms of settlement to share with the member and the Hearings Officer to provide foundation for discussions
- You must also come prepared to schedule a date for the Merits hearing in the event the application is not resolved at the CMH.

*If the member does not show up to the Case Management Hearing, the Landlord and Tenant Board adjudicator could decide to proceed to a Merits Hearing based on other grounds (not arrears or persistent late payment). However, we have not heard of that happening.

How to prepare for the Case Management Hearing

The LTB encourages co-ops and members to come to the Case Management Hearing prepared to consider settlement.

1. Be ready to negotiate

Since the goal of the Case Management Hearing is to give the co-op and member an opportunity to settle the case, the LTB hearing officers expect the co-op to offer something. Whether it is some kind of agreement on repaying arrears or some options for behaviour changes, the co-op should be ready to have a serious discussion with the member about how the case could be settled.

2. Know what the co-op wants

The co-op should have an idea about what it is willing to do. For example, how long is the co-op willing to wait for the arrears to be paid off? What changes in the member's behaviour would be acceptable? If the co-op isn't willing to negotiate, make sure there is a good reason and the co-op is able to explain it clearly.

3. Co-op's representative needs to be able to act

The co-op needs to give its legal representative the instructions about what the co-op wants. By appointing a legal representative, the co-op is giving them authority to make decisions at the hearing and negotiate with the member, in accordance with the co-op's instructions. The co-op should authorize a director to attend the hearing or to be available by phone during the hearing in case something comes up and the representative needs new or revised instructions.

What to bring to the Case Management Hearing

- bring a copy of all evidence to the Case Management Hearing
- it will be up to the LTB adjudicator to decide any questions about the evidence, and they may not permit evidence in certain situations (such as written statements when the person is not there to testify)
- be ready with details of the amounts owing (the ledger) for any arrears or late payment matters
- all parties must provide the other parties and the LTB with a complete copy of all documents, pictures and other evidence they intend to rely upon at least seven days before the Case Management Hearing or five days in the case of reply evidence. Reply evidence is something that addresses an issue raised by the other party's evidence
- Co-op witnesses do not need to attend the Case Management Hearing. Witnesses do have to be present to give evidence at the Merits hearing

The majority of co-op evictions that go to the LTB are settled at the Case Management Hearing. The co-op can use this process to reach a solution to the eviction and avoid a longer legal process. Make sure the co-op is ready. To read the LTB's practice direction, check out the Non-Profit Co-op Evictions page on the LTB website at <https://tribunalsontario.ca/ltb/non-profit-co-op-evictions/>

More Tips:

The other tip sheets in this series give your board advice on specific issues that might 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 eviction work referred to, it is important that the board works with staff as a team and provides clear direction. These tip sheets can be found in CHF Canada's online Member Resource Centre at chfcanda.coop/resources.

For more information on the eviction system please contact:

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For more resources in this series, visit chfcanda.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.*