



How to collect money at LTB

The Residential Tenancies Act (RTA) has no method for collecting money owed on an order of the Landlord and Tenant Board (LTB). This issue of *Evictions: What co-ops need to know* outlines the process for filing an LTB order with the Small Claims Court and choosing a method of enforcement.

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.

When a co-op takes a member to the LTB, the main outcome the co-op wants is an eviction. However, the co-op may also want to collect money that the former member owes the co-op – either arrears or amounts for damage. Sometimes co-ops make agreements with the former member to pay or they may send the file “to collections.” That means they send it to a collection agency. This has the advantage of limiting the time and trouble to the co-op, but the collection agency often gets a large percentage of what they collect (could be 25% to 50% or even up to 100%, if there is a minimum amount they are permitted to recover).

Sometimes co-ops want to enforce the order – that is, take the “legal route.”

Before undertaking this process, a co-op should be quite certain that the former member has income or assets. If not, there is nothing for the co-op to recover. The co-op should also consider the time and costs to the co-op of trying to collect, compared to the amount owing. After considering these two issues (that is, can the former member pay? And is the amount owing worth collecting given the costs of collection), it is often not financially worthwhile for the co-op to start the collection process through the courts.

For full details, check out “Rule 20 Enforcement of Orders” under the Rules of Small Claims Court, available on the e-Laws website at www.ontario.ca/laws. (Select “Regulations” then search for 258/98.) Also see the Small Claims Court’s Guide to procedures in small claims court, After Judgment available on the Ontario Attorney General website at www.attorneygeneral.jus.gov.on.ca/english/courts/guides.

All forms are referred to by name with the form identification number following in brackets. They are available on the Small Claims Court section of the Ontario Court Forms website at www.ontariocourtforms.on.ca/english/scc.

File the order with the Small Claims Court

The first step is to take the final order from the LTB to the Small Claims Court and file it with the court office. You must bring the certified copy of the order that your co-op received in the mail after the LTB hearing. When you file the LTB’s order it becomes an order of the Small Claims Court. The co-op will be given a Small Claims Court file number and the methods of enforcement available for all orders in that court will be available for the LTB order. There is no time limit for registering the order; however, there are deadlines for enforcing it, as described below.

Forms: No form is required

Cost Per the small claims court website: <https://www.ontario.ca/page/fees-small-claims-court#section-3>

Enforcing the order

Once your co-op has filed the order with the Small Claims Court, you must choose one of three methods of enforcement.

- The most likely method is garnishment, as discussed below.
- If the member is in possession of valuable property or real estate, the co-op can enforce the order by getting a Writ of Seizure and Sale of Personal Property.
- If the member owns land, the co-op can get a Writ of Seizure and Sale of Land.

For more information on these methods, refer to the Small Claims Court Guide.

For all methods of enforcement, the co-op must complete an Affidavit for Enforcement Request (20P). This form details the basic information of the claim such as the date of the order, amount owing, interest charges and the chosen method of enforcement.

The co-op should enforce the order within six years of the date it was made. If more than six years have elapsed, the co-op must get the permission of the court to enforce.

Garnishment

Garnishment allows the co-op to get the money it is owed either directly from the former member's bank account or from a third party that owes the former member money. The most common way of doing so is by retaining a certain amount from the former member's paycheque. You cannot garnish income support payments made under Ontario Works, the Ontario Disability Support Program, Canada Pension Plan or Ontario Old Age Security. The maximum amount of each paycheque that can be garnished is 20%.

Forms: Affidavit for Enforcement Request (20P), Notice of Garnishment (20E), Garnishee's Statement (20F), Affidavit of Service (8A)

Cost Per the small claims court website: <https://www.ontario.ca/page/fees-small-claims-court#section-3>

These are the steps to follow:

1. Complete the Affidavit for Enforcement Request and Notice of Garnishment forms.
2. Submit these documents to the court. The court will sign and issue the documents and return them to the co-op.
3. Serve the Notice of Garnishment on the garnishee (i.e. employer, bank, etc.) along with a blank Garnishee's Statement.
4. Within five days of serving the garnishee, the co-op must serve the debtor with the Affidavit for Enforcement Request and Notice of Garnishment.
5. Complete two affidavits of service, one for the garnishee and one for the debtor, and submit them to the court. You can serve documents by fax, mail or in person.

The first payment of money (if there is any) is paid to the court by the debtor and will be held for 30 days. Subsequent payments are delivered to the creditors as they are received.

There are several situations in which the court will refuse to pay the money out to the creditor, such as the debtor has requested a garnishment hearing (a type of appeal) or the court has ordered that the payment must be delayed. If no such circumstance exists, a cheque will be mailed to the co-op.

Examination in Aid of Execution

Sometimes the court or the co-op needs more information to be able to enforce an order. An Examination in Aid of Execution is a court process to get information needed. For example, if the order is to be enforced by garnishing the former member's paycheque, the legal name of the employer will be required. If it is to be enforced by a Writ of Seizure and Sale of Personal Property, the location and approximate value of that property will be required.

If this information is not known and the former member refuses to provide it voluntarily, the co-op can access it by requesting that the court schedule an Examination in Aid of Execution. The former member will be required to attend the court on a specified date at a specified time so that the co-op can ask questions about these matters.

Forms: Notice of Examination (20H) and Affidavit for Enforcement Request (20P), Financial Information Form (20I), Affidavit of Service (8A)

Cost Per the small claims court website: <https://www.ontario.ca/page/fees-small-claims-court#section-3>

These are the steps to follow:

1. Complete the Affidavit for Enforcement Request and Notice of Examination.
2. Submit these documents to the court. The court will sign and issue the documents, return them to the co-op and set a date for the examination.
3. Serve the notice and Financial Information Form on the former member at least 30 days before the hearing. It must be served by personal service or an alternative to personal service.
4. Complete and file the Affidavit of Service at least three days before the hearing.
5. Attend the hearing and question the former member. He or she can be questioned on anything relevant to satisfying the judgment, such as the reasons for non-payment, his or her financial information and location of assets.

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:

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@chfcanda.coop

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

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.*
