



**Tribunals Ontario**

Landlord and Tenant Board

## **Member Endorsement Form**

I, Sean Henry, member of the Landlord and Tenant Board, make the following endorsement with respect to application file number: **LTB-L-027327-24**

The Landlord filed an application with the Landlord and Tenant Board (the LTB) for an order to terminate the tenancy and evict the Tenant because the Landlord intends to demolish the rental unit or the residential complex. The hearing of the application is scheduled to take place by video conference in an all-day docket on Monday, January 20, 2025.

The Tenant filed the following accommodation requests: that the hearing be scheduled to take place to not before 1:30 p.m. and not on a Tuesday. The Tenant also requested as an accommodation that they be allowed: to chew gum, drink fluids and take breaks every 30 to 40 minutes as needed; as well as to review their notes during the hearing and for additional time to present evidence and make submissions as needed.

In addition, the Tenant requests that the hearing be scheduled to take place in the absence of the public and that their name be redacted from the order both because the Tenant intends to introduce evidence concerning their health care circumstances and because the Tenant has a fear of public speaking.

### **Request For Accommodation**

The LTB is required to provide a hearing that is procedurally fair and responsive to accommodation needs raised by a party. With this principle in view, I determine that it is appropriate to grant the Tenant's request to reschedule the hearing to take place at 1:30 p.m. on the scheduled hearing date, which is not a Tuesday.

The Tenant's remaining above accommodation requests are deferred to the hearing where the Tenant may bring them to the attention of the presiding adjudicator at the start of the hearing. For example, the Tenant may ask the presiding adjudicator for longer and more frequent breaks if this may help address the Tenant's accommodation needs. Moreover, the presiding adjudicator may make further orders if they are of the view that the circumstances do not permit for a fair hearing.

## **Request That the Hearing Be Closed To The Public And That The Order Be Redacted**

Hearings at the LTB are generally open to the public, in accordance with s. 9 of the *Statutory Powers Procedure Act* (“SPPA”). Moreover, s. 2(1) of the *Tribunal Adjudicative Records Act* (“TARA”) requires the Tribunal to make its adjudicative records, which includes evidence and submissions, available to the public.

Public access to both hearings and adjudicative records are protected by the open court principle. This principle, which is protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*, establishes a strong presumption that hearings are open to the public and that adjudicative records are available to the public: see *Toronto Star v. AG Ontario*, 2018 ONSC 2586.

The person seeking to restrict access has the onus to displace the general rule of openness. Limits on the open court principle must be proven on a case-by-case basis, but confidentiality orders will only be made in exceptional cases in order to preserve the integrity of the principle.

The test used by courts for imposing limits on the open court principle provides guidance when considering whether to override the principle that LTB hearings should be open to the public: *Toronto Star* at paras. 89-93. The test was recently recast by the Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25. The Court held that a person seeking to limit the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

In *Sherman Estate* the Court recognized that privacy can be an important public interest under the discretionary test where it can be demonstrated that protection of human dignity is at risk. Where one’s dignity is impaired, the impact on a person is no longer theoretical, but can have real consequences such as psychological distress.

In this case, the Tenant has failed to establish the test outlined by the Court in *Sherman Estate* with respect to their privacy concerns the public presentation of the Tenant’s evidence and submissions.

It may be that the nature of the information that the Tenant intends to submit as evidence rises to the level outlined in *Sherman Estate*, such that their dignity would be put at risk through its disclosure. However, I cannot conclude, based on the minimal information that the Tenant has

provided in support of their request, that openness in this case poses a serious risk to the administration of justice.

Moreover, the test from *Sherman Estate* requires a person seeking a confidentiality order to establish that the order sought is necessary because reasonably alternative measures will not prevent the risk posed by openness. In this case the Tenant requests an order restricting public access to the hearing. This order is arguably the most restrictive on the open court principle. The Tenant's request does not address why less intrusive orders would not suffice, such as an order anonymizing their name in the LTB's decision, or an order banning publication of information that could identify the Tenant and where they live.

For these reasons, the Tenant's request is denied. The Tenant may, however, bring a request for the same order as a preliminary issue at the hearing. They would be prudent to refer to the principles discussed above in this decision.

### **Filing Evidence**

In the event the parties have concerns about filing their evidence, I note that the LTB provides the following process to ensure that parties are able to file their evidence:

- 1) Each party must give the other party a complete copy of all of the evidence they want to use during the hearing as soon as possible but at least 7 days before the hearing.
- 2) Each party must also upload their evidence to the Tribunals Ontario Portal at TOP: Tribunals Ontario Portal | Tribunals Ontario at least 7 days before the hearing.
- 3) If a party is unable to upload their evidence to the Tribunals Ontario Portal, they may email it to the LTB at least 7 days before the hearing using this address: [ltb.evidence@ontario.ca](mailto:ltb.evidence@ontario.ca).
- 4) Files emailed to the LTB cannot exceed 35 megabytes.
- 5) Files larger than 35 megabytes should be broken into smaller attachments and emailed to the LTB as separate attachments, if possible.
- 6) A party who is unable to send their evidence to the LTB by email due to size of the file may ask the LTB for permission to provide the evidence using the Ontario Government Attachment Service (EATS). The party should email the request to the LTB email address identified in the Notice of Hearing. If the request is granted the party will receive an email from the LTB with instructions on how to send the file to the LTB using EATS.
- 7) Files emailed to the LTB must be in one of the following formats: PDF, Word, Excel, JPG, MP3, MP4 or MOV.
- 8) If a party is unable to email their evidence to the LTB or use EATS, they may mail the evidence to the LTB Regional Office responsible for their file. If the evidence can be

made available in hard copy, such as documents or printed photos, they may mail the hard copy to the LTB.

Regardless of the hearing format, parties should ensure that their evidence is clearly labeled and numbered so that it is easy to refer to in the hearing. Failure to do so may result in the Member not accepting disclosure.

As per the LTB's Practice Direction on Evidence:

All documents, photographs and other items provided to the other parties and the LTB as evidence must:

- 1) Be readable;
- 2) Have consecutively numbered pages; and
- 3) Include a list or table of contents identifying each item in order, and by page number, if more than one item is being submitted.

### **Public Access Terminal And Loaner Phone**

I note that parties who do not have access to a telephone, computer and/or the internet may be granted use of a Public Access Terminal (a "PAT") at the LTB's Hearing Centre in downtown Toronto. In order to further facilitate a party's participation using a PAT, the LTB ensures that a staff member is available to assist them on the day of the hearing should they have any difficulty using the provided phone or computer. As well, the LTB is running a free Loaner Phone program to provide telephone access assistance to enable parties to participate in an electronic hearing. If the Tenant wants to use a PAT or a loaner phone to participate in the hearing, they should make the request to the LTB as soon as possible, explaining clearly the technological or other barriers they face by participating in a telephone or video conference hearing.

### **Legal Aid Ontario**

I also note that the Tenant may consider contacting their local community legal clinic prior the hearing. To find their local legal clinic, the Tenant may contact Legal Aid Ontario at 1-800-668-8258. The Tenant may also wish to contact the Tenant Duty Counsel Program (TDC). TDC has created an online registration system that tenants with a scheduled hearing may use to request legal assistance. This system can be accessed at [www.tdc.acto.ca](http://www.tdc.acto.ca).

### **Direction**

- 1) LTB staff are directed to reschedule the hearing to 1:30 p.m. on the originally scheduled hearing date and to send a new Notice of hearing to the parties.
- 2) The Tenant's remaining above accommodation requests are deferred to the hearing where the Tenant may bring them to the attention of the presiding adjudicator at the start of the hearing.

- 3) The Tenant's requests for an order closing the hearing to the public and for an order redacting the order that will result from the eventual hearing of the application are denied. The Tenant may make these requests before the presiding adjudicator at the start of the hearing.
  
- 4) If the Tenant requires additional accommodation to participate in the hearing, they are directed to contact the LTB as soon as possible.

SH

**December 5, 2024**  
**Date Issued**

---

**Sean Henry**  
Member, Landlord and Tenant Board