

LANDLORD AND TENANT BOARD MOCK HEARING

IN THE MATTER OF: 159 ALEXANDER STREET, UNIT 5B
BETWEEN: JOHN SMITH AND VERA STEVENS



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For each OJEN Landlord and Tenant Board Mock Hearing, there are three packages:

- » **OJEN Landlord and Tenant Board Mock Hearing Scenario**
- » **OJEN Landlord and Tenant Board Mock Hearing Role Preparation Package**
- » **OJEN Landlord and Tenant Board Mock Hearing Justice Sector Volunteer Package**

Students need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

LANDLORD AND TENANT BOARD MOCK HEARING

SCENARIO: IN THE MATTER OF: 159 ALEXANDER STREET, UNIT 5B
BETWEEN: JOHN SMITH AND VERA STEVENS



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IN THE MATTER OF: **159 ALEXANDER STREET, UNIT 5B** BETWEEN: **JOHN SMITH AND VERA STEVENS**

- » Non-payment of rent
- » Noise complaint

For this OJEN mock hearing, there are four packages:

- » **OJEN Landlord and Tenant Board Mock Hearing Scenario**
- » **OJEN Landlord and Tenant Board Mock Hearing Scenario Appendix: Landlord and Tenant Board Forms**
- » **OJEN Landlord and Tenant Board Mock Hearing Role Preparation Package**
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Youth need the **Scenario**, **Scenario Appendix** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

This resource was prepared for the Ontario Justice Education Network by Eli Fellman, Barrister and Solicitor, and lawyers from Kensington Bellwoods Community Legal Services.



PARTICIPANTS

LIST OF PARTICIPANTS

APPLICANT WITNESSES

1. **John Smith** (Landlord)
2. **Robert/Emma Thomson** (Resident of Unit 5A)

RESPONDENT WITNESSES

3. **Vera Stevens** (Tenant)
4. **Naomi Trainer** (Friend of the Tenant)
5. **Representatives for the Landlord** (4)
6. **Representatives for the Tenant** (4)
7. **Board Member** (may be played by a student, teacher or justice sector volunteer)

WHAT HAPPENED?

Mr. John Smith, the landlord of a townhouse complex on Alexander Street, awoke on the morning of March 17, 20XX to the sound of someone knocking loudly on his front door. He opened the door to find one of his tenants, Ms. Vera Stevens, standing before him with an angry look on her face. She had just arrived home from her night-shift work to find a padlock on her door and Mr. Smith's car blocking her driveway at unit 5B.

FACT
SCENARIO

For the past 4 months, Ms. Stevens had been behind in her rent. Mr. Smith had tried to contact her several times (unsuccessfully) and decided that he could only get her attention by locking her out and blocking her driveway. A shouting match erupted, which only ended when Ms. Stevens called the police; they ordered Mr. Smith to remove both the car and lock.

Things got worse about a week later when Ms. Stevens experienced water, internet and power outages at unit 5B. She called Mr. Smith to complain about this.

Mr. Smith, frustrated with the fact that Ms. Stevens was still behind with her rent payments and that her neighbours frequently called him with noise complaints about the townhouse unit she shared with her three sons, decided to take steps to evict Ms. Stevens and her family. He contacted a paralegal, Mr. Billy Chang, to help him with the dispute. Mr. Chang served Ms. Stevens with a notice of termination which stated that she owed Mr. Smith \$2000 in rent (Form N4). Mr. Chang also served Ms. Stevens with another notice of termination stating that her sons make too much noise (Form N5).

Ms. Stevens did not pay the outstanding rent and the noise complaints continued. Therefore, Mr. Chang (on behalf of Mr. Smith) filed with the Board:

1. an Application to Evict a Tenant for Non-Payment of Rent and Collect Rent the Tenant Owes (Form L1); and
2. an Application to Terminate a Tenancy and Evict a Tenant (Form L2) (relating to the noise complaint).

RELEVANT LAW AND PROCESS

The following information can be found in the *Residential Tenancies Act, 2006* ('Act') available online at: <http://www.e-laws.gov.on.ca/>

I. HOW A LANDLORD MAY TERMINATE A TENANCY FOR NON-PAYMENT OF RENT

Overview:

If a tenant does not pay his/her rent, the landlord can give the tenant a notice to pay the rent owing, or move. If the tenant does not pay or move in response to the notice, the landlord can apply to the Landlord and Tenant Board (LTB) for an order to evict the tenant and to collect the rent that the tenant owes.

Steps in the process:

Notice of Termination [see section 59]

The landlord must first give the tenant a notice in writing, in a form called a Notice to End a Tenancy Early for Nonpayment of Rent (Form N4). The Form N4 must include:

- how much rent the landlord believes the tenant owes,
- the date that the landlord wants the tenant to pay the overdue rent by (this is called the termination date), and
- that if the tenant does not pay the rent or move by the termination date in the notice, the landlord can apply to the LTB to evict the tenant.

If the tenant pays the rent every month (known as a monthly tenancy), the termination date must be at least 14 days after the landlord gives the tenant the Form N4.

If the tenant pays all of the rent owed before the landlord files an application to the LTB, the Form N4 is void and the tenant does not have to move.

Application [see sections 69(1) and 74(1)-(3)]

If the tenant does not pay the full amount of rent owing by the termination date in the Form N4, the landlord can apply to the LTB for an order that:

- requires the tenant to pay all of the money they owe, and

- allows the tenant to be evicted by the Sheriff, unless the tenant voids the order by paying all of the money owed by the deadline determined by the Board Member.

The earliest this application can be filed at the LTB is the day **after** the termination date in the notice.

Hearing

At the hearing, the landlord can tell the Board Member about how much rent s/he believes the tenant owes.

The tenant can respond to the issues in the landlord's application, and explain why the landlord should not get what s/he asked for. For example, if the tenant disagrees with the amount of rent the landlord claims is owed, or if the tenant needs more time to pay the rent, the tenant can raise these issues.

RELEVANT
LAW

Tenant Issues [see sections 82(1) and 29(1)]

At a LTB hearing about rent arrears, a tenant can also argue that the landlord has not fulfilled his/her obligations under the Act. The tenant can raise issues like:

- The landlord hasn't maintained the rental unit in a good state of repair (making sure that it meets health, safety, housing and maintenance standards) [s.20];
- The landlord has withheld a vital service that s/he is supposed to provide under the rental agreement [s.21];
- The landlord has interfered with the tenant's reasonable enjoyment of the rental unit [s.22];
- The landlord has harassed, obstructed, coerced, threatened or interfered with the tenant [s.23];
- The landlord has altered the locks on the rental unit without giving the tenant replacement keys [s.24];
- The landlord has illegally entered the rental unit [s.25].

If the LTB Member agrees with the tenant, the landlord can be ordered to do a number of different things. For example, the Landlord can be ordered to fix anything that requires repair; stop the offensive conduct; and/or pay the tenant money (called an abatement of rent). For a complete list of the remedies the LTB can award the tenant, see sections 30-31 of the Act.

Relief from eviction [see sections 83 (1)-(3)].

After reviewing the evidence and submissions provided at the hearing, the Board Member can:

1. dismiss the application;
2. grant the eviction; or
3. postpone the eviction for a period of time.

The Board Member must consider both the landlord's and the tenant's circumstances before deciding if it would be unfair to postpone or deny the eviction.

RELEVANT
LAW

The Board Member must refuse to evict the tenant if the landlord is in serious breach of his/her responsibilities under the Act or the tenancy agreement.

If the Board Member decides the tenant should be evicted due to non-payment of rent, s/he will also consider how much time the tenant should have to void the eviction order by paying the outstanding rent to the landlord. The standard amount of time provided is 11 days from the date the Member issues the order. The order will state that if the tenant pays all of the outstanding rent to the landlord by the deadline chosen by the Board Member, the tenancy will continue and the tenant does not have to move out.

II. HOW A LANDLORD MAY TERMINATE A TENANCY IF THE TENANT SUBSTANTIALLY INTERFERES WITH THE LANDLORD OR OTHER TENANTS' REASONABLE ENJOYMENT

Notice of Termination [see section 64]

If the landlord believes that the tenant, or the tenant's guest or occupant, has substantially interfered with the landlord's or other tenants' reasonable enjoyment of the residential complex, the landlord may give the tenant a Notice to Terminate a Tenancy Early (Form N5). The Form N5 must:

- Include a description of the tenant's conduct that is of concern to the landlord;
- Provide the date the tenant must move out of the rental unit (called a termination date) that is at least 20 days after the Form N5 is given to tenant; and
- inform the tenant that s/he has 7 days to stop the conduct described in the Form N5.

If the tenant stops the conduct within 7 days of receiving the Form N5, the Form N5 is voided and the tenant does not have to move out of the rental unit.

Application [see section 69(1)-(2)]

If the tenant does not stop the conduct within 7 days, the landlord can apply to the LTB for an order that that terminates the tenancy.

The landlord must file the application within 30 days of the termination date contained on the Form N5.

Hearing

At the hearing, both sides will provide their evidence and submissions. The Board Member will then determine if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant, is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant, or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

RELEVANT
LAW

Relief from eviction [see sections 83 (1)-(3) and 78]

After reviewing the evidence at the hearing, the Board Member can:

1. dismiss the application
2. grant the eviction;
3. postpone the eviction for a period of time;
4. allow the tenancy to continue so long as the tenant meets certain conditions (e.g. the tenant cannot have any more loud parties late at night).

The Board Member must consider both the landlord's and the tenant's circumstances before deciding if it would be unfair to postpone or deny the eviction.

The Board Member must refuse to evict the tenant if the landlord is in serious breach of his/her responsibilities under the Act or the tenancy agreement.

If the Board Member decides the tenant should be evicted, s/he will also consider whether the tenant should be given more time to move out.

JOHN SMITH, LANDLORD

Your background:

- Your name is John Smith.
- You have been the owner of a complex of 10 townhouses for the past 10 years.
- You make a decent income from renting 9 of the units out to various tenants, while keeping one of the units as your home and office.
- During the past 10 years, you have only had to evict tenants a few times.
- Although you have been before a Landlord and Tenant Board in the past, you have always had an agent represent you.

Your version of what happened:

- Your tenants come from various backgrounds and about a quarter of them are elderly. You had to adopt strict rules about noise in order to keep the tenants happy. Excessive noise is unacceptable at any time during the week and after 10 pm on the weekends.
- Two of your elderly tenants, Robert and Emma Thomson, live in townhouse 5A, next to the one in which Vera Stevens and her 3 kids live. Ever since Ms. Stevens moved in 18 months ago, the Thomson's have regularly complained (at least once a month) about the excessive noise that the kids made. They complained that it sounded as if the kids were playing hockey inside the house.
- You were aware that Vera worked long hours while the 17, 15 and 12 year old boys were often home alone. You went over there 4 times to tell them to keep it quiet.
- Ms. Stevens used to always pay the \$1,200 rent in full and on time. However, in January 20XX,

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
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- » Stick to the script. Don't make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the paralegals/agents/representatives representing your side ahead of time, and get into character when you take the stand.

JOHN SMITH, LANDLORD

she stopped making her monthly rent payments. You went to her house on January 2 to ask her to pay. She was home and very upset. She told you that she had recently been let go from both of her jobs and that she also had some problems with one of her boys, but that she would pay the rent as soon as possible.

- You did not hear from her again in January, despite calling her 3 times and leaving messages on her answering machine. You felt it must be difficult as an unemployed single mother of 3, so you didn't push it.
- On February 1, Ms. Stevens left an envelope with \$1000 cash in your mailbox, for which you wrote her a receipt for the month of February. You thought that she would come around to pay the January rent and the rest of February soon.
- On March 1, Ms. Stevens missed her rent deadline again. In the meantime, the noise complaints from the Thomson couple intensified. They complained about people arguing during the day, and loud music at night. After trying unsuccessfully to contact her several times over the next few weeks, you decided to put a lock on her door and block her driveway with your car. You were frustrated and convinced that that would get her attention.
- On the morning of March 17, you were woken up by a loud bang on your door. It was Ms. Stevens. She had just arrived home and found the lock on the door and your van in the driveway, which you had placed there after midnight that night. Ms. Stevens was furious and yelled at you. You yelled back. The argument escalated and you both swore and insulted each other. She called the police who ordered you to remove the obstacles to her house. You obliged. That night, Ms. Stevens slipped a \$600 cheque under your door.
- On March 26, some city people came and did some work on the water system due to a rain storm. Vera called complaining of power and water outages. None of your other tenants complained about it. The next day, you called a paralegal about evicting Vera from the townhouse.
- On April 1, Billy Chang, of Chang Paralegals, served Vera with 2 notices of termination on your behalf. The first, the Form N4, said that Ms. Stevens must pay you \$2000.00 for the outstanding rent. The second, the Form N5, said that Ms. Stevens and the other occupants of her unit must stop making loud noises that disturb their neighbours.

JOHN SMITH, LANDLORD

- Ms. Stevens did not pay you any more money after she was served with the notices and you received yet another noise complaint. Therefore, on April 25, you decided to file an application with the Landlord and Tenant Board for an order to evict her and to collect the rent she owed you (\$3200, including rent for April).

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How does Ms. Stevens' failure to pay rent affect you?

How does the fact that you have received a number of noise complaints about Ms. Stevens affect you?

How do you feel about the possibility of letting Ms. Stevens continue to live in the townhouse?

Do you feel bad about evicting Ms. Stevens while she is unemployed?

What might your other tenants think if you evict Ms. Stevens? If you don't evict her?

Do you think you handled the situation fairly, up to this point?

WITNESS
INFORMATION

ROBERT/EMMA THOMSON, RESIDENT OF UNIT 5A

Your background:

- Your name is Robert/Emma Thomson.
- You have been the tenant in townhouse 5A at 159 Alexander Street for the past 15 years.
- You choose to live at 159 Alexander Street because it is located in a quiet neighbourhood and Mr. John Smith, your landlord, does a good job of keeping the townhouse complex orderly and well-maintained.
- You are on friendly terms with most of your neighbours, and like you, many of them are retired.
- You spend most of your time at home and generally know about what goes on in the complex.

Your version of what happened:

- Ever since Vera Stevens moved in next door 18 months ago, the townhouse complex has not been as quiet and peaceful as it used to be. You find her 3 boys loud and unruly. You are often awoken from your sleep by thumping noises coming from the other side of your living room wall. You've seen the boys play ball hockey in the street and you suspect that they sometimes play ball hockey in the house.
- You have brought this to the attention of Mr. Smith on several occasions. Although you have probably complained to him at least once a month, you haven't found this to have had much effect on the noise levels.
- Beginning in mid-February, the noise from Ms. Stevens' townhouse intensified. You noticed that she began to leave her house in the early evening and not arrive home until early the next

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ROBERT/EMMA THOMSON, RESIDENT OF UNIT 5A

morning. Late at night on February 17 and again on February 25, you heard loud music coming from next door and voices you did not recognize as Ms. Stevens' or her sons'. On a few occasions in mid-March 20XX (you cannot recall the exact date), the voices got heated and it sounded like people were arguing. You assume that the boys have been throwing parties when their mom is not at home. You began to complain to Mr. Smith on a weekly basis at this point. Late in the evening on March 16, you saw Mr. Smith park his car in Ms. Stevens' driveway. You thought that this was strange when you saw him leave his car in her driveway and walk back to his townhouse a few doors down the street.

- On March 26, your water and power were interrupted, but you saw some city people doing some work around the townhouse complex in the afternoon and assumed that the interruptions were caused by them.
- You were out of town March 29 to April 4 visiting your sister.
- Late at night on April 6, two days after you returned from your sister's house, you were woken up in the middle of the night by some thumping noises. You were not positive what caused the noises, but you assumed that it came from Vera's unit because of the ongoing issues you have been experiencing. You complained to Mr. Smith the next day about the thumping noises.
- There have been no other loud noises coming from the rental unit since the April 6 incident.

WITNESS
INFORMATION

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How does the noise from Ms. Stevens' unit effect you?

What is your opinion of Ms. Stevens? Her kids?

Do you think it would have been better if you had talked to Ms. Stevens about the noise problems?

How would you feel if Ms. Stevens and her kids were evicted from the townhouse complex?

Do you think Mr. Smith handled the situation fairly towards Ms. Stevens, and towards you?

VERA STEVENS, TENANT

Your background:

- Your name is Vera Stevens.
- You are 39 years old and a single mother of 3 boys.
- After your divorce, you and your 3 sons (now 17, 15 and 12), decided to move into a bigger place that gave your teenage boys more room.

Your version of what happened:

- You moved into townhouse 5B at 159 Alexander Street 18 months ago. At that time, you had to work 2 jobs and were rarely home during the day. You asked your boys to behave at home while you were gone, but the elderly neighbours next door were very sensitive about the slightest noise. Although your landlord, Mr. John Smith, gave you a few warnings about the noise your kids made, you were always on good terms with him.
- In December 20XX, you were let go from both of your jobs and realized that you were unable to pay the rent for the month of January. You had always paid your rent on time until then, and you didn't know what to do. When Mr. Smith showed up at your door on January 2 to ask for the rent, you wrote a \$650 cheque and gave it to him. You never received a receipt for it, but you kept the bank copy, as you always do.
- Around the middle of January you started working a low-paying night job and managed to pull together \$1000 in cash, which you paid to Mr. Smith on February 1. During that month, you started having problems with your oldest son. He started getting into trouble at school.

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VERA STEVENS, TENANT

You were afraid that he was getting involved in a gang. It was very hard for you to supervise him now that you were working nights. A few times you came home in the morning to find the house in a mess because of friends he had had over the night before. You recently had a discussion with him and he promised that he wouldn't have any more parties while you are away at work.

- With everything else going on, you forgot to pay your March rent. On the morning of the March 17, you found a lock on your door and Mr. Smith's car in your driveway. You went to his unit to confront him, but instead of explaining himself, he started calling you names and threatening to evict you. You had just worked all night and lost your temper. You yelled back and then called the police, who ordered Mr. Smith to remove the car and the lock.
- That night, you thought that paying at least half of your rent would appease him, so you slipped a \$600 cheque under his door.
- During the days of March 25 and 26, your water, internet and power were interrupted for many hours at a time. You figured Mr. Smith was purposely tampering with them, trying to make it unpleasant for you to live there.
- On April 1, when you returned home from work in the morning, you found Mr. Smith's car blocking your driveway again. You also found 2 different notices of eviction in your mailbox. One said that you owe rent to the landlord and one said that your children make too much noise. You were not sure what to do when you got the notices.
- You were home all day on April 6 because you were sick in bed. Your medication made you very drowsy and you slept soundly that night. You did not hear any usual or loud noises that day.
- At the end of the month, you received another form which informed you that a hearing was going to be held at the Landlord and Tenant Board about evicting you and ordering you to pay a sum of \$3,200 in rent to Mr. Smith. At that point, you sought help from a local community legal clinic specializing in landlord and tenant disputes.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How do you feel about the possibility of moving somewhere else?

How do you feel about the possibility of being forced to pay the rent claimed by Mr. Smith?

Do you think Mr. Smith dealt fairly with you?

Are you embarrassed about the missed rent and yelling at Mr. Smith?

Do you think you could have handled the situation differently?

Do you suspect your boys caused more trouble than you know?

WITNESS
INFORMATION

NAOMI TRAINER, FRIEND OF THE TENANT

- Your name is Naomi Trainer.
- You have been a good friend of the tenant, Vera Stevens, for the past 7 years.
- You helped Ms. Stevens through her divorce and moved her and her boys into their new home on Alexander Street.
- You appeared before the Landlord and Tenant Board last year because your landlord failed to make several important repairs to your apartment. Due to your negative experience with landlords in the past, you have strong opinions on Ms. Stevens' situation and believe that landlords often treat their tenants unfairly.

Your version of what happened:

- When Ms. Stevens lost both of her jobs in January, you helped her get a new job – the same night shift position you hold. To save on gas (and because you live nearby) you usually pick up Ms. Stevens each evening, travel to and from work together, and drop her off at home the next morning.
- On the morning of March 17, when you drove to Ms. Stevens' place to drop her off you both noticed that her driveway was blocked by a car. As Ms. Stevens got out of your car she said, "that's my landlord's car – what on earth is it doing in the driveway?" You remained in the car while Ms. Stevens walked to her door. You noticed that she could not get inside her house and appeared to be struggling with the door. Ms. Stevens came back to your car and angrily explained that she found a padlock on her front door and could not open it. You gave her a ride down the street to the townhouse unit occupied by her landlord

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NAOMI TRAINER, FRIEND OF THE TENANT

and watched her knock on his door. You saw him open the door and watched anxiously as the two began to shout at each other. You debated getting out of the car and assisting Ms. Stevens, but as you moved to get out, Ms. Stevens came back to the car and got in. You suggested that she call the police and waited with Ms. Stevens until Mr. Smith removed both the car and the padlock.

- On the morning of March 26, you noticed that Ms. Stevens appeared to have no power or running water in the townhouse. You remained at home with Ms. Stevens as she called her landlord to complain.
- On April 1, when you dropped Ms. Stevens off as usual, you remember seeing what appeared to be the landlord's car blocking her driveway once again. Ms. Stevens was furious and became even more so when she discovered an eviction notice in her mailbox. You know that Ms. Stevens is going through a tough time and believe that she is doing the best she can. When Ms. Stevens told you a couple of weeks later that she received some papers from the Landlord and Tenant Board indicating that Mr. Smith had applied for an order for non-payment of rent and eviction, you suggested that she seek advice from the local legal aid clinic.

WITNESS
INFORMATION

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What is your impression of Mr. Smith? Do you think that he handled the situation fairly?

Do you think it would be fair if Ms. Stevens was evicted?

BOARD MEMBER

If the role of the Board Member is not being played by a justice sector volunteer, the following chart will help you to organize and render your decision. Additional information on preparing for the role of the Board Member is available in the Role Preparation Package.

ISSUE	SUMMARY/FINDING
What is the rent per month ?	<i>I find that the lawful rent is _____ per month.</i>
How much does the landlord believe he is owed? When was he was paid? What proof does he have of this payment?	<i>The landlord alleges that...</i>
How much does the tenant believe she owes? When did she make rent payments and how much? What proof does she have of these payments?	<i>The tenant says that...</i>
Who do you believe? Why?	<i>I prefer the evidence of the landlord/tenant...</i>
What is your finding as to the amount of rent owed?	<i>I find that the Tenant owes...</i>
What are the allegations raised by the landlord on the Form N5?	
What is the landlord's evidence in support of the Form N5 allegations?	

BOARD MEMBER
INFORMATION

BOARD MEMBER

BOARD MEMBER INFORMATION

ISSUE	SUMMARY/FINDING
What is the tenant’s response to the landlord’s claims raised in the Form N5?	
Who do you believe and why?	
Has the tenant voided the Form N5 by ceasing to engage in the described conduct during the 7 days after the forms were served to her?	
Did the tenant raise any issues of her own at the hearing?	<i>The tenant raised the following issues at the hearing...</i>
What was her evidence about these complaints?	<i>The tenant states that on...</i>
Did the tenant tell the landlord about her concerns? When?	
What was the landlord’s response to these complaints?	<i>The landlord maintains that...</i>
What do the witnesses have to say about these complaints?	<i>The tenant’s witness stated that...</i>
	<i>The landlord’s witness stated that...</i>

BOARD MEMBER

ISSUE	SUMMARY/FINDING
<p>Who do you believe? Why? Do you believe the landlord on one issue but the tenant on another?</p> <p>What are your findings on the issues which were raised by the tenant?</p>	<p><i>I prefer the evidence of the landlord/tenant...</i></p> <p><i>I find that...</i></p>
<p>You have the ability to grant relief from eviction.</p> <p>(This means that the tenant will not be evicted, because of special circumstances or hardship.)</p> <p>Did the Tenant raise this at the hearing?</p> <p>Do you find it appropriate to use your discretion in this case and grant relief?</p> <p>Why or why not?</p>	<p><i>Given the circumstances, I find that this is an appropriate case to grant relief...</i></p> <p>OR</p> <p><i>Despite the circumstances, I find that it would be unfair to grant relief...</i></p>

BOARD MEMBER
INFORMATION

BOARD MEMBER

BOARD MEMBER
INFORMATION

ISSUE	SUMMARY/FINDING
<p>What will you order...</p> <ul style="list-style-type: none"> • about the amount of rent owed by the tenant? • about what the tenant may have alleged she is owed by the landlord? • about who pays for the application fee? • about the final amount owed by the tenant , taking into account all of the above? • about the timeline for repayment? (if applicable) • about the claims that the tenant makes too much noise? • about whether or not the tenancy is terminated? • about the date on which the tenant must move out? (if the tenancy has been terminated) • about what the tenant can do to void this order? (i.e. – by what day she has to pay the amount in full in order to remain in the townhouse) 	<p><i>It is ordered that...</i></p>

Fig. 1: Copy of the cheque Vera Stevens wrote for part of the January 20XX rent

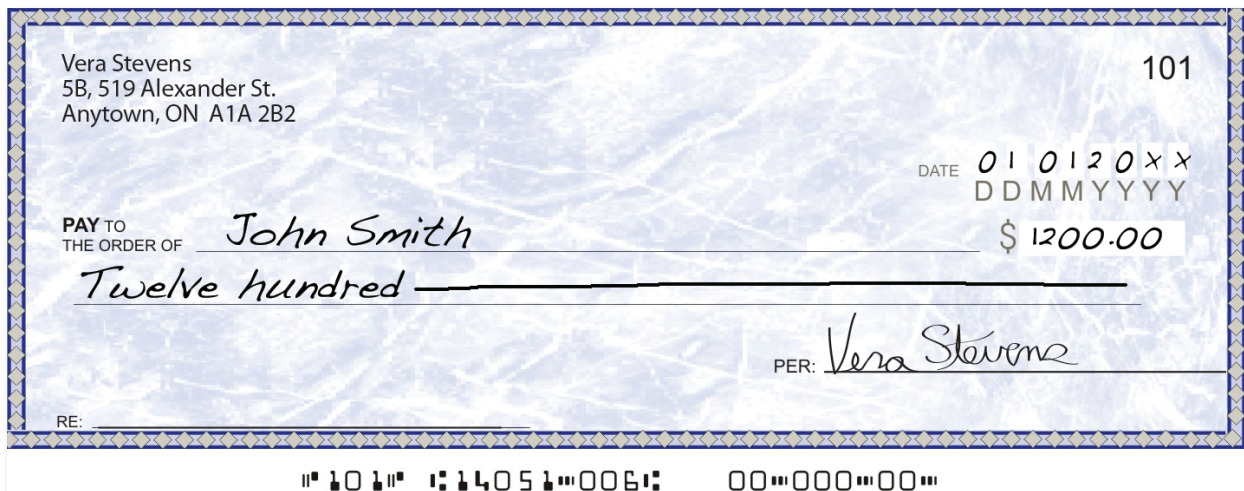


Fig. 2: Vera Stevens' photo of John Smith's car in her driveway - March 17, 20XX



Fig. 3: Vera Stevens' Photo of John Smith's car in her driveway - April 1, 20XX



LANDLORD AND TENANT BOARD MOCK HEARING
 IN THE MATTER OF: 159 ALEXANDER STREET, UNIT 5B



Fig. 4: John Smith's receipt records for the past 5 months

RENT RECEIPT

Date: 11/01/20XX

Tenant name: **Vera Stevens**
 For rent at: **5B, 159 Alexander St. Anytown, ON, A1A 2B2**

Cash

Cheque # 34

Money Order # _____

AMOUNT:
 \$ 1200 ⁰⁰/₁₀₀

Signature: *John Smith*

Memo: Rent billed monthly.

Receipt #152/300

RENT RECEIPT

Date: 12/01/20XX

Tenant name: **Vera Stevens**
 For rent at: **5B, 159 Alexander St. Anytown, ON, A1A 2B2**

Cash

Cheque # 35

Money Order # _____

AMOUNT:
 \$ 1200 ⁰⁰/₁₀₀

Signature: *John Smith*

Memo: Rent billed monthly.

Receipt #153/300

RENT RECEIPT

Date: 02/01/20XX

Tenant name: **Vera Stevens**
 For rent at: **5B, 159 Alexander St. Anytown, ON, A1A 2B2**

Cash

Cheque # 36

Money Order # _____

AMOUNT:
 \$ 1000 ⁰⁰/₁₀₀

Signature: *John Smith*

Memo: Rent billed monthly.

Receipt #154/300

RENT RECEIPT

Date: 03/01/20XX

Tenant name: **Vera Stevens**
 For rent at: **5B, 159 Alexander St. Anytown, ON, A1A 2B2**

Cash

Cheque # 37

Money Order # _____

AMOUNT:
 \$ 600 ⁰⁰/₁₀₀

Signature: *John Smith*

Memo: Rent billed monthly.

Receipt #155/300

EXHIBITS

SAMPLE ORDER UNDER S. 69

Residential Tenancies Act, 2006

You may wish to share this sample order with your students only after a decision has been rendered by the class.

In the matter of: **159 Alexander Street, unit 5B**
Anytown, Ontario, A1A 2B2

Between: **John Smith**

Landlord

and

Vera Stevens

Tenant

John Smith (“the Landlord”) applied for an order to terminate the tenancy and evict Vera Stevens (“the Tenant”) because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex or another lawful right, privilege or interest of the Landlord or another tenant (L2 application).

These applications were heard in Anytown, Ontario on May 12, 20XX.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Billy Chang, a licensed Paralegal. The Tenant was represented by her friend Elaine Vandelay.

The Landlord called Emma/Robert Thompson (E.T.) as a witness and the Tenant called Naomi Trainer (N.T.) as a witness.

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EVIDENCE AND DETERMINATIONS:

L1 APPLICATION – RENT ARREARS

1. The lawful rent is \$1200.00 per month.
2. There is no last month rent deposit.
3. The Landlord alleges that the Tenant owes \$3200.00 in rent for the period up to April 30, 20XX.
4. The Landlord states that the Tenant did not pay any rent in January, paid only \$1000 for February, and paid only \$600.00 for March and did not make any payments in April. The Landlord produced copies of signed receipts in these amounts for February and March, as well as receipts for \$1200.00 for November and December.
5. The Tenant admits to owing some, but not all of the alleged arrears of rent. The Tenant states that she owes \$2550.00 in rent arrears. The Tenant states that she paid \$650.00 by cheque in January, \$1000.00 in cash for February, and \$600.00 by cheque for March. The Tenant did not produce a receipt for January, but did produce a bank photocopy of the cheque made out to the Landlord.
6. Having considered the Landlord and the Tenant's evidence, I find that the Tenant owes \$2550.00 in rent for the period up to April 30, 20XX, and not \$3200.00 as claimed by the Landlord. I am satisfied that the Tenant did make a \$650.0 payment by cheque in January. While the Tenant did not have a receipt for January, the copy of the cashed bank cheque establishes that she made this payment.

L1 APPLICATION – SECTION 82 ISSUES

7. The Tenant raised several issues under section 82 of the Act and requested that the Board award an abatement (refund) of the some of the rent she owes the Landlord.
8. The Tenant states that on March 17 she returned home to find the Landlord's car blocking her driveway and a padlock on her front door. The Tenant called the police, who attended at the residence and ordered the

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Landlord to remove his car and the padlock. The Landlord does not deny that he parked his car in the Tenant's driveway or altered her lock. However, he states that he did not have the intention of keeping the Tenant locked out of her house. He states that he merely wanted to "prove a point," that he was not going to tolerate her continued refusal to pay her full rent. The Landlord states that the Tenant banged loudly on his door and yelled at him.

9. The Tenant states that on March 25 and 26, her power, water and internet were interrupted for extended periods of time. The Tenant believes that it was the Landlord who deliberately caused this disruption.

10. The Landlord denies interfering with the Tenant's power, water and internet services. The Landlord states that on March 26 after a rain storm, City of Anytown officials came and did some work on the water system. The Landlord states that while the Tenant called to complain of power and water outages, none of his other tenants complained about it. The Landlord said he was "harassed" by three telephone calls from the Tenant to tell him that she had no power and water.

11. The Tenant states that on April 1 she returned home to find the Landlord's car again blocking the driveway. She also received the two notices of termination from the Landlord on this day.

12. The Tenant's witness, N.T., is a friend of the Tenant and regularly visits the residential complex. N.T. stated that on various occasions she has witnessed the Landlord being verbally aggressive to the Tenant. She was present during the March 17 altercation and witnessed the Landlord yelling out insults at the Tenant. N.T. was also visiting the Tenant on March 26 when the power went out and the water was not working.

13. After considering all of the evidence, I find that the Landlord breached his responsibilities under sections 22, 23 and 24 of the Act by altering the Tenant's lock and blocking her driveway on March 17. This behaviour constitutes harassment and has seriously interfered with the Tenant's reasonable enjoyment of her rental unit. The fact that the Landlord only wanted to get the Tenant's attention is irrelevant – he is not permitted to take the law into his own hands. While the lock was not altered for very long and

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the Landlord did not block the Tenant's driveway for a long period, these are serious breaches of the Act. Therefore, an abatement of rent in the amount of \$600.00 is appropriate. This amount will be deducted from the amount the Tenant owes to the Landlord.

14. Regarding the power, water and internet disruptions, I prefer the evidence of the Landlord. The Tenant did not give any evidence to establish that the Landlord caused these disruptions. The most likely explanation for the service disruptions was the storm and the City staff performing necessary repairs. As the Landlord was not responsible for this relatively brief disruption in service, he should not be required to compensate the Tenant for any inconvenience she may have experienced.

L2 APPLICATION – NOISE COMPLAINTS

15. The Landlord testified that the Tenant or her children are having loud parties which disturb other residents of the complex. As a result, he has received a number of complaints from other tenants.

16. The Landlord's witness, E.T., is a tenant in 5A, the adjacent unit to the Tenant's. E.T. testified that the Tenant and her sons are a "huge" disturbance to the neighbourhood because of they are extremely loud. E.T. testified about loud parties taking place on February 17 and again on February 25. There was another noise disturbance that occurred on April 6, which E.T. believes came from the rentals unit, but is not certain. ET also stated that it has been relatively quiet since April 6.

17. The Tenant admitted that she has had problems with one of her children, and he may have had visitors at the rental unit on a few occasions late at night while she was away at work. She testified that she has put a stop to this behaviour and things are now under control. The Tenant denies being responsible for making any loud noises on April 6, but admitted to be soundly asleep due to her medication.

18. I find that the Tenant's children did disturb other residents of the complex by making excessive noise late at night on February 17 and again on February 25. I found E.T.'s testimony to be convincing and credible on this point. However, I am not satisfied that the Tenant or her children made any

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excessive noise in the rental unit during the period April 1 through April 7, 20XX. While E.T. testified that there was some sort of noise disturbance, s/he was not able to state with any degree of certainty that it came from the rental unit.

19. As there was no excessive noise during the seven day period following the service of the Form N5 on the Tenant, I find that the Tenant has voided this notice of termination in accordance with subsection 64(3) of the Act.

SECTION 83 - RELIEF FROM EVICTION

1. The Tenant is a single-mother with three teenaged children. In December, she lost her two jobs and this led to her difficulty paying her full rent. She has since started a new job and is financially capable of paying the arrears of rent over a period of time.

2. Given the Tenant's circumstances, as well as the Landlord's breaches as determined above, I find that this is an appropriate case for the Board to exercise its discretion under s. 83(1) to grant relief from eviction, on the condition that she makes all of the payments to the Landlord set out in the schedule below.

IT IS ORDERED THAT:

1. The L2 application is dismissed.
2. The Tenant owes the Landlord \$2550.00 in outstanding arrears for the period up to April 30, 20XX.
3. The Landlord owes the Tenant a \$600.00 abatement of rent. This shall be deducted from the amount the Tenant owes to the Landlord.
4. The Tenant shall also pay the Landlord's \$170.00 application filing fee.
5. The total amount the Tenant owes to the Landlord is \$2120.00. The Tenant must pay this amount to the Landlord as follows:
 - i) \$530.00 on or before June 15, 20XX;
 - ii) \$530.00 on or before July 15, 20XX;

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iii) \$530.00 on or before August 15, 20XX; and

iv) \$530.00 on or before September 15, 20XX

6. The Tenant must also pay the rent for the months of June through September 20XX on or before the first day of each month.

7. In the event that the Tenant breaches either paragraph five or six of this order, the Landlord may apply under section 78 of the Residential Tenancies Act, 2006, without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant. The Landlord must make this application no later than 30 days after the Tenant's failure to make a payment.

May 13, 20XX

Date of Order

Name & Signature of Board Member