

LANDLORD AND TENANT BOARD MOCK HEARING ROLE PREPARATION



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For each OJEN Mock Hearing, there are three packages:

- » Mock Hearing Scenario
- » Role Preparation Package
- » Justice Sector Volunteer Package

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

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



GENERAL INFORMATION ABOUT LANDLORD AND TENANT BOARD HEARINGS

This mock hearing is designed to help you learn more about landlord and tenant law and the Landlord and Tenant Board. The Landlord and Tenant Board is the place where landlords and tenants must go to resolve their legal disputes. Many people have some idea of what a criminal trial looks like from television or movies. Administrative hearings, like those that take place at the Landlord and Tenant Board, may resemble a criminal court in some ways, but are not actually part of the traditional court system. They are set up to resolve disputes (like courts); however, they are less formal, less expensive and are usually a faster way to resolve disputes.

LANDLORD AND TENANT BOARD HEARINGS

The Residential Tenancies Act (“the Act”) sets out the rights and responsibilities of landlords and tenants who rent residential properties. One of the Landlord and Tenant Board’s responsibilities is to provide information about the Act to landlords and tenants. If one side (party) thinks the other side has not followed these rules (and the two parties cannot resolve the problem themselves), either one can file an application with the Landlord and Tenant Board.

Once an application is filed, the parties have an opportunity to have their problems addressed at a hearing. The person who made the application (applicant) will try to show why the application should be granted, and the person who is affected by the application (respondent) can respond and try to show why it should not be granted.

The person in charge of the hearing is called a Member of the Board. At the hearing, a Board Member will apply the Act to make a decision on the application based on the evidence presented by the landlord and tenant.

In Landlord and Tenant Board hearings, the applicant must prove his/her case on a balance of probabilities. To meet the “balance of probabilities test,” the Member must think it is more likely than not that the applicant is entitled to the decision they are asking the Board Member to make. This standard is not as high as in criminal trials, where the standard of proof is beyond a reasonable doubt.

Either a landlord or a tenant can file an application at the Board. However, if the landlord has submitted an application about rent arrears, but the tenant has some complaints of his/her own, the tenant can also raise these issues at the hearing. For example, if the tenant has concerns about outstanding maintenance problems, these issues can be raised at the hearing scheduled to consider the landlord’s claim that the tenant owes rent.

The most common type of hearing is an oral hearing, where the applicant and respondent appear in person before a Member. Sometimes the Landlord and Tenant Board will conduct hearings over the telephone, by video conference or by writing where the parties file written documents, instead of appearing in person.

If both the landlord and tenant agree, a professional Board Mediator can work with them and try to help them reach their own agreement before the hearing begins. If the mediation is successful and the parties reach an agreement then



there is no need for a hearing. If the mediation is unsuccessful and the parties cannot reach an agreement then the parties can have their hearing.

HIRING A REPRESENTATIVE FOR THE HEARING

Parties can represent themselves at the hearing, or they can have someone else present their case to the Board. A party can ask a friend or family member to represent them at the hearing so long as they do not charge for this service. A party can also hire a licensed lawyer or paralegal to represent them.

Paralegals are not lawyers, do not attend law school and are not authorized by the government to offer legal services in the same way that lawyers are. However, through formal education, training and/or experience, they provide legal services to the public by representing clients in certain lower court proceedings, tribunals and administrative bodies, such as landlord and tenant matters and traffic violations. Like lawyers, paralegals must be registered with the Law Society of Upper Canada.



TIME CHART FOR A LANDLORD AND TENANT BOARD MOCK HEARING

ORDER	ACTION	TIME LIMIT
1	Member calls hearing to order	1 min
APPLICANT'S CASE		
2	Applicant's direct examination of their first witness	6 mins
3	Respondent's cross-examination of the applicant's first witness	2 mins
4	Applicant's re-direct of their first witness (if necessary)	1 min
5	Applicant's direct examination of their second witness	3 mins
6	Respondent's cross-examination of their second witness	2 mins
7	Applicant's re-direct of the applicant's second witness (if necessary)	1 min
RESPONDENT'S CASE		
8	Respondent's direct examination of their first witness	6 mins
9	Applicant's cross-examination of respondent's first witness	2 mins
10	Respondent's re-direct of their first witness (if necessary)	1 min
11	Respondent's direct examination of their second witness	3 mins
12	Applicant's cross-examination of respondent's second witness	2 mins
13	Respondent's re-direct of their second witness (if necessary)	1 min
<p>NOTE: A Member can ask questions of the applicant, respondent or their witnesses at any time during the Landlord and Tenant Board hearing.</p>		
CLOSING SUBMISSIONS		
14	Applicant's closing submissions	3 mins
15	Respondent's closing submissions	3 mins
16	Applicant's reply (if necessary)	1 mins
BOARD MEMBER DECISION AND CLOSING		
17	Board Member deliberates and makes a decision	2 mins
POST HEARING DISCUSSION		
18	Board Member gives feedback and discusses hearing process, etc.	10 mins

TIME CHART



ETIQUETTE AND PROTOCOL AT THE HEARING

The Landlord and Tenant Board is not as formal as a court, but you must still show respect for the Board Member and the other people in the room.

At the beginning of the hearing the Board Member may tell you how s/he wants to be addressed. Usually they are addressed as “Member Last Name”, for example, “Member Johnson”. If you forget, you can call them “Sir” or “Madam”.

When facing the Member, the respondent usually sits at the table to the left and the applicant sits at the table to the right.

Before addressing the Member, wait until the Member seems ready to proceed.

The Member may nod or may say that you can proceed. If you are not sure, ask the Member if you may proceed. Make sure to introduce yourself.

If it is not your turn to address the Member, pay attention to what is happening. Take notes that you can use during re-direct or closing submissions.

During the hearing, if you need to talk with your co-representatives, write a note. Do not talk to each other while a witness is giving evidence or the Member is speaking.

If the Member asks you a question, take your time to think about it before replying. If you do not hear the question, or are confused by it, ask the Member to repeat or restate the question. If you do not know the answer, say so. Once a question has been answered, pick up from where you were before the question.

Do not interrupt the Member, and if a Member interrupts you, stop immediately and wait until they are finished before replying. Never interrupt or object while the opposing representative is addressing the Member. Wait until you are specifically asked by the Member to respond to a point argued by the opposing representative.

REMEMBER TO:

- » Speak clearly
- » Use an appropriate volume
- » Try not to say “um”, “ah” or “okay”
- » Do not go too fast



ROLE PREPARATION FOR REPRESENTATIVES

As a **representative**, you represent either the landlord or the tenant at the hearing. During the hearing, representatives for both sides:

- Conduct direct examinations of their own witnesses
- Conduct cross-examinations of the other side’s witnesses
- Have the opportunity to follow-up with a re-direct of their own witnesses
- Make closing submissions

The representative of the applicant will call his/her witnesses first. Each of the applicant’s witness will be cross-examined by the respondent’s representative. When s/he is finished, the representative of the respondent goes next and calls his/her witnesses.

The applicant’s representative gives his/her closing arguments first. The respondent’s representative goes second.

WHAT IS DIRECT EXAMINATION?

Direct examination is when one side puts a witness in the witness box to give evidence to support its case.

The purpose of a direct examination is to have the witness tell the Board, in a clear and logical way, what the witness observed.

HOW TO PREPARE FOR DIRECT EXAMINATION

- Write down all the things that your side is trying to prove.
- Read the witness’ testimony carefully, several times over.
- Make a list of all the facts in the witness’ testimony that help your case.
- Put a star beside the most important facts that you must make sure that your witness talks about.
- Create questions to ask the witness that will help the witness tell a story:
 - Start with questions that will let the witness tell the Board who s/he is
 - For example: What is your name? What do you do? How long have you worked in that job?
 - Move to the events in question
 - For example: What were you doing on the night in question? Where were you? When did you first hear there was a problem?

PREPARATION:
REPRESENTATIVE



- Move to more specific questions
 - For example: What did you see? What did you do after that happened?
- Remember to keep your questions short and to use simple language.
- It is important not to ask leading questions. A leading question is one which suggests an answer or puts words in the witness' mouth.
- An example of a leading question is "Was the man six feet tall and about 25-years old?" Instead you might ask: "Please describe what the man looked like." Or, "Wow old was he? And how tall?"

WHAT IS CROSS-EXAMINATION?

Cross-examination is when the representative for the other side gets to ask your witness questions.

There are two basic approaches to cross-examinations:

1. To get favourable testimony. This involves getting the witness to agree to facts that support your case.
2. To discredit the witness. This approach is used so the Member will minimize or disregard evidence or comments that do not support your case.

HOW TO PREPARE FOR CROSS-EXAMINATION

- Make a list of all the facts in the witness' testimony that hurt your case.
- If there are a lot of facts that don't help your case, can you find a way to challenge the witness' credibility? For example, can you show that the witness made a mistake or has a reason for not telling the truth?
- Put a star beside the facts you must make the witness talk about.
- Write short leading questions that move towards the key points you want to make.
- Depending on what the witnesses' say, you might need to come up with different questions on the spot during the hearing.

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REPRESENTATIVE

HOW TO PREPARE FOR RE-DIRECT

After cross-examination, the representative who conducted the direct examination will have the opportunity to ask the witness some further questions about anything new which came up during the cross-examination. This is called a “re-direct”.

- Pay attention to the questions and answers given when the other side cross-examines your witness.
- Take notes. Write down anything that you would like the witness to clarify once the other side has finished cross-examining.
- Remember that re-direct is not an opportunity to ask the questions you forgot to ask in your direct examination. You can only use re-direct to clarify issues which were raised during cross-examination.
- It is not necessary to do re-direct if no new issues were raised.

HOW TO PREPARE CLOSING SUBMISSIONS

- Write down your key arguments and summarize the important facts you want to stick in the Member’s mind.
- When delivering the closing submissions, try to speak in short, clear sentences. Be brief and to the point.
- Only summarize evidence that actually was given at the hearing. You cannot introduce new evidence during the closing statement. This may mean you have to re-write your closing submissions on the spot during the hearing.
- Where a witness for the other side admitted something important to your case, point that out.



ROLE PREPARATION FOR BOARD MEMBER

As the Board Member:

- You are the decision-maker at the Landlord and Tenant Board hearing.
- You will listen to the parties and may ask them questions at any time during the hearing.
- You may also ask the witnesses questions at any time during the hearing.
- You are a referee. The Member is in charge of the hearing. If the parties do not behave properly, you can make them leave the hearing room and continue the hearing without them.
- If a representative objects to a question by another representative, decide whether or not the witness must answer the question.
- At the end of the trial, summarize what the law and evidence is relating to the case.
- You will make a final decision about the application by announcing the decision at the end of the hearing.

HOW TO OPEN THE HEARING:

WHEN ALL PARTICIPANTS ARE IN THEIR PLACES, YOU WILL SAY:

Good morning/afternoon. My name is XXXX and I will be hearing the cases here at the Landlord and Tenant Board.

If you are a tenant, please note that you can receive free legal advice from tenant duty counsel services, which are located here on-site. Tenant duty counsel is provided by Legal Aid Ontario for tenants. Eligible landlords can call the Landlord’s Self-help Centre for information and advice.

Please be aware that the Landlord and Tenant Board offers free mediation services, where a neutral mediator can work with the Landlord and Tenant to try and work out a solution to the application. If parties are interested in the Board’s mediation services, the mediation will take place before the matter is heard. If mediation fails, you will still be entitled to a hearing, and nothing that was said during the mediation can be mentioned during the hearing.

The cases today will not necessarily be heard in the order listed on the printed docket. I will deal with quick matters first, such as adjournment



requests and uncontested applications, before moving on to more lengthy matters.

I ask that you be courteous and respectful towards the other parties and the Board when you are appearing on your application today.

I will be calling out the matters by Application number and address.

HOW TO SWEAR IN WITNESSES

BEFORE A PARTY/WITNESS GIVES HIS/HER TESTIMONY, YOU WILL SWEAR THEM IN BY SAYING:

Will you please state your name? Please spell your first and last name.

Do you solemnly affirm that the evidence you are about to give, shall be the truth, the whole truth and nothing but the truth?

HOW TO RENDER A DECISION AND CLOSE THE HEARING

AFTER BOTH THE APPLICANT AND THE RESPONDENT HAVE MADE THEIR CLOSING SUBMISSIONS AND YOU ARE READY TO GIVE YOUR DECISION, EXPLAIN THAT YOU WILL BE GIVING AN ORAL DECISION TODAY.

NOTE: in complex cases, Members commonly “reserve” their decision, write it at a later date and then mail it to the parties. If you are running out of time at the mock hearing, consider reserving your decision. You can use your notes from the hearing to draft a written decision.

INDICATE HOW THE MATTER CAME BEFORE YOU. FOR EXAMPLE:

The landlord, Mr. Damian Whyte, applied for an order to terminate the tenancy and evict the tenant, Ms. Carly Suh, because he says that she has not paid the rent which she owes him.

YOU SHOULD NEXT EXPLAIN WHO ATTENDED THE HEARING, THE WITNESSES WHO WERE CALLED, AND WHO REPRESENTED THE PARTIES. FOR EXAMPLE:

Both Mr. Whyte and Ms. Suh attended the hearing. Mr. Whyte called Joe Harris as a witness and Ms. Suh called Hector Martinez as a witness.

Mr. Whyte was represented by _____(name(s) of representative(s)).



Ms. Suh was represented by _____(name(s) of representative(s)).

YOU SHOULD NEXT SUMMARIZE THE EVIDENCE AND MAKE FACTUAL DETERMINATIONS. THE CHART INCLUDED IN THE SCENARIO PACKAGE WILL HELP YOU TO ORGANIZE YOUR DECISION.

WHEN YOU ARE FINISHED WITH YOUR SUMMARIES AND DETERMINATIONS, BRING THE HEARING TO A CLOSE.

PREPARATION:
BOARD MEMBER