

2015 ONPHA Conference & Trade Show



Session #607:

Here Comes the Adjudicator: Preparing for an LTB Hearing

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Read all about it...

Police second effort results in arrest, seized guns, and drugs

What began as a disturbance complaint in the city's south end on the weekend ended up with an arrest and the seizure of a small arsenal.

East Division patrol officers arrived at a building near Main Street and Concession Road early Saturday morning, and found a man who was drunk and disorderly in the hallway.

They arrested him for that, and for obstructing police.

The first frisk search turned up one handgun, drugs and some cash. That led to a more thorough search of his apartment, this time when the guns and gangs unit arrived with a search warrant, and they found three loaded shotguns, more guns and more cash.

In addition to the guns and ammunition, they seized an estimated 200 grams of marijuana, eight grams of cocaine and 100 tablets of morphine.

Malik Goddard, 26, of Anywhere has been charged with a string of firearms and drug-related offences.



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**KEEP
CALM
AND
TAKE THE
NEXT STEP.**



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Basic Steps

Action	Purpose
In-House Efforts	Work with the tenant, make attempts at accommodation if appropriate, or draft a payment plan if it's about rent.
Determine Notice	Analyze the conduct and determine the type of termination notice to use. Review the facts, getting <u>names, dates and times</u> .
Draft Notice	Be specific, lots of details with dates/times.
Serve Notice	Watch out for timing issues, # of days from service to termination.



Basic Steps

Action	Purpose
File & Schedule	Filing gets your claim into the system, and the hearing date is set. Cost is \$170.
Gather Facts	Figure out the who, what, when, where and why. Have a team meeting to double-check your facts.
Assemble Docs	Based on the facts you believe to be true, put together documents that support your position; pictures, letters, case notes, security reports, security videos, invoices.



Basic Steps

Action	Purpose
Select Witnesses	All evidence is entered through your witnesses. People with first-hand knowledge of the facts must attend. The more witnesses, the stronger your case will be. Summons those witnesses you feel may not attend voluntarily.
Prepare Questions	Make a sheet for every witness, write down questions you will ask them. Answers to the questions, along with documents, sets out the facts for your case.



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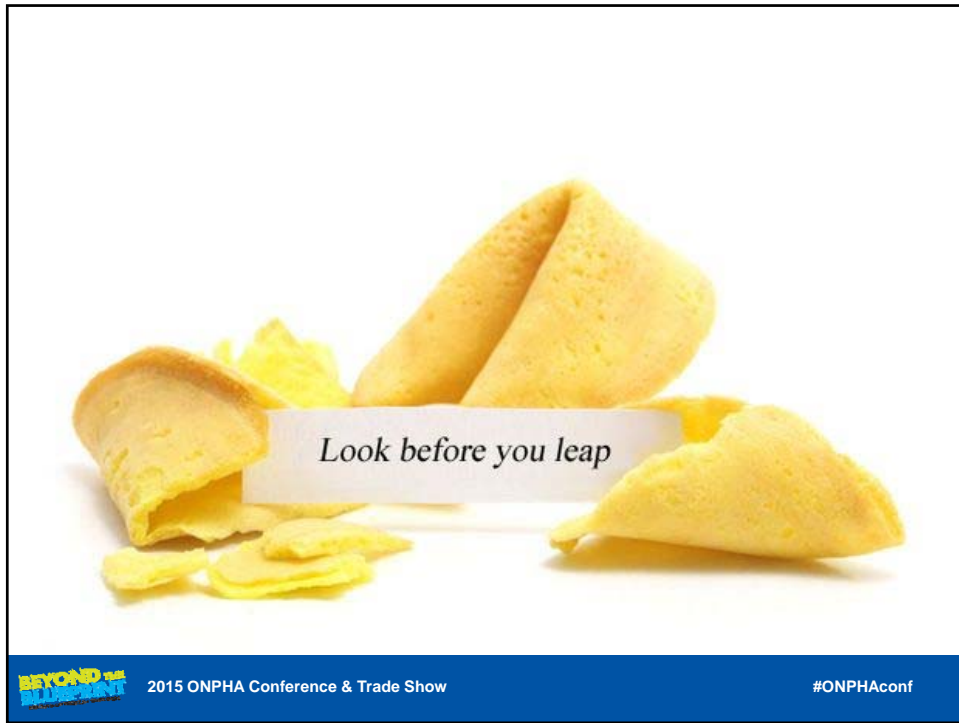
Basic Steps

Action	Purpose
Prepare Preliminary Issues	Anticipate any procedural issues
Use Case Law	Your facts are reinforced by the case law you present. Precedent from a higher court binds the Member. Cases from other LTB Members may be persuasive but do not bind the Member.
Prepare Closing	Your closing submissions are important. Try to draft a basic outline before-hand.



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Prior to LTB notice

- Interview persons involved
- Get the facts
 - Illegal acts/serious impairment of safety
 - Need to act quickly
- Write a letter to tenant
- Invite tenant to meeting
- Determine any *Human Rights Code* issues
- Suggest accommodation plan
- Negotiate reasonable steps



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Prior to LTB notice

- Investigate costs of accommodation
- Try to connect tenant to supports
- Put results of meeting in writing



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Notices for conduct

LTB Form #	Notice to be used for:
N5	<p>Early termination for wilful or negligent damage to the rental unit, interference with the reasonable enjoyment of other tenants or the landlord or interference with the landlord's lawful right or interest.</p> <p>Number of people living in the rental unit is more than permitted by health, safety or housing standards</p>
N6	<p>Early termination for an illegal act or illegal business at the residential complex, special provisions for drug production.</p> <p>Early termination for mis-representation of income.</p>
N7	<p>Early termination for impaired safety, or for causing wilful & undue damage. Also for use of the rental unit in a manner inconsistent with its normal use.</p>

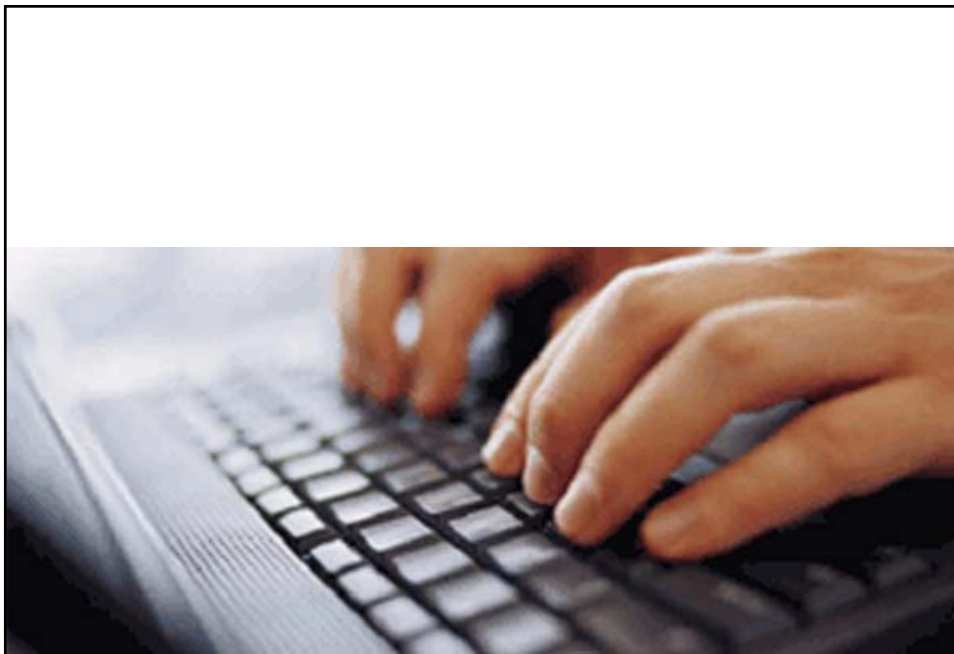
Which notice to use

- Is it an N5 for damage or enjoyment?
- Is it an N6 for an illegal act or misrepresentation?
- Is it an N7 for serious impairment of safety?
- Is it a combination of these notices?



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Getting it write

- Use up-to-date LTB forms
 - LTB released new forms on July 1, 2015
- Use an attached appendix to the form
 - describing facts
 - easily updated in Word
- N5 notice often accompanied by N6 and N7
 - N6 and N7 notices are NOT voidable by the tenant by simply behaving for 7 days.



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Getting it write

- Board will dismiss application without:
 - specifics, dates, times, etc. in notices
- If appropriate, serve multiple notices
 - N5, N6 and N7
- If serving multiple termination notices:
 - ALWAYS use same termination date (20 days out at minimum) on all notices



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Sample N6

Notice to End your Tenancy
For Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit
N6

To: (Tenant's name) include all tenant names DANA GODDARD	From: (Landlord's name) TRUE NORTH NON-PROFIT HOUSING
---	---

Address of the Rental Unit:
UNIT 1, 123 MAIN STREET
ANYWHERE, ON POP 1P0

This is a legal notice that could lead to you being evicted from your home.

The following information is from your landlord

I am giving you this notice because I want to end your tenancy - I want you to move out of your rental unit by the following termination date: 27/09/2015 .
dd/mm/yyyy

I can apply to the Board immediately for an order to evict you. See Information from the Landlord and Tenant Board on Page 2.

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My Reason(s) for Ending your Tenancy
I have shaded the box(es) next to my reason(s) for ending your tenancy.

Reason 1
I believe that you or someone living with you has committed an illegal act or is carrying on an illegal business at the residential complex involving:

- the production of an illegal drug;
- trafficking in an illegal drug;
- possession of an illegal drug for the purposes of trafficking.

or

I believe that you or someone living with you has permitted someone else to carry out one or more of the above illegal activities involving drugs in the residential complex.

Reason 2
I believe that you or someone living with you has committed an illegal act or is carrying on an illegal



File the application

- File an L2 with LTB when:
 - tenant has been served the notice,
 - or the notice voiding period for N5 has ended
- Include all your notices, certificates of service, payment, dates you are not available for hearing (first 3 weeks after filing)
- New e-filing service available



Sample L2

Social Justice Tribunals Ontario
Providing fair and accessible dispute resolution
Landlord and Tenant Board

Application to End a Tenancy and Evict a Tenant
FORM L2

PART 2: APPLYING TO END A TENANCY

If you want the Board to end the tenancy and evict the tenant, shade the box completely next to your reason for applying.

I am applying to evict the tenant because:

Reason 1: I gave the tenant one of the following Notices to End your Tenancy.

Shade the box(es) completely next to the notice(s) you gave the tenant and on which you are basing this application. Also indicate the termination date in the Notice to End your Tenancy in the space provided.

Notice N5: Notice to End your Tenancy for Interfering with Others, Damage or Overcrowding.

Notice N6: Notice to End your Tenancy for Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit.

Notice N7: Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex.

Notice N8: Notice to End your Tenancy at the End of the Term.

Notice N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit.

Notice N13: Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert it to Another Use.

What is the termination date in the notice you selected above:

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Sample L2

Social Justice Tribunals Ontario
Providing fair and accessible dispute resolution
Landlord and Tenant Board

Application to End a Tenancy and Evict a Tenant
FORM L2

PART 4: SIGNATURE

Landlord/Representative's Signature:

Who has signed the application? Shade the circle completely next to your answer.

Landlord Representative

Information about the tenant's rent and rent deposit

Provide the following information to help the Board determine the amount of money the tenant may owe you.

The current rent is: \$

The amount of rent on deposit: \$

The date the rent deposit was collected:

The last rental period for which the tenant was paid interest on the rent deposit: to

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Scheduling a hearing

- Hearings are often a month or more out
- Ask for an expedited date if there are safety issues
 - [Request to Extend or Shorten Time form](#)



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Scheduling a hearing

- Check with key witnesses before scheduling
 - make sure that they can attend
- Letters just don't cut it
 - Tenant witnesses are crucial
- Serve copy of application and notice of hearing on tenant
 - Even though LTB does this for you
 - Tenant cannot argue that they did not receive it



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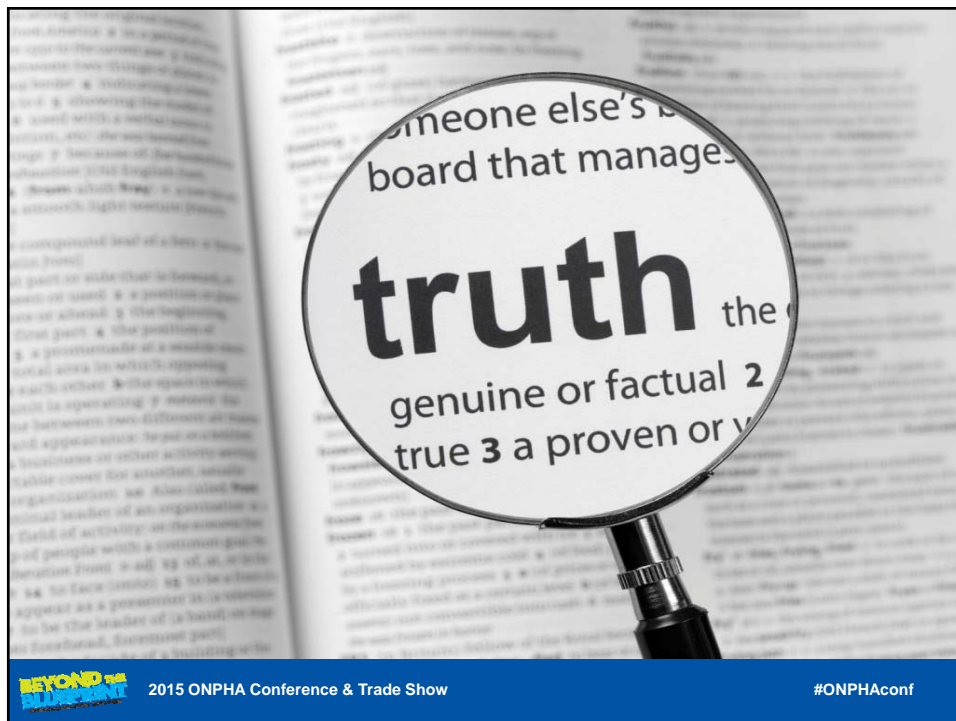
Changing Date of Hearing

- Get written consent (if possible) of the other party in advance
- Fill out [Request to Reschedule form](#)
 - send to LTB as soon as you are aware of conflict
- If other party will not consent to adjournment
 - send a representative



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Gathering facts

- You rarely know facts as well as you think you do
 - Fact check
 - Review documents
 - Speak to key witnesses
- Meet with team
 - make sure you have all the details



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DON'T wear blinders



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Gathering facts

- Be willing to hear all the facts, even if they do not support your position
- Create written chronology
 - Helps you prepare questions
 - Notice of termination should serve as basis for case
- DO NOT rely on second-hand recollections
 - Go to source



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Assembling documents

- Go through tenant file, pull together:
 - leases,
 - maintenance files,
 - rent ledgers,
 - work orders,
 - police reports,
 - security reports,
 - invoices,
 - quotes,
 - case notes, etc.



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Assemble documents

- Put documents in date order
 - Sorted by witness
- Pictures are compelling
 - Get good quality pictures
 - always with the proper date set on camera
- Write notes on back of picture
 - what are you looking at
 - which bedroom
 - which broken window etc.



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Assembling documents

- Security videos make most compelling evidence
 - Catalogue what each video shows
 - You will need to describe it
- Make 3 copies of ALL documents including pictures (exhibits):
 - one for you
 - one for the other party
 - one for the adjudicator



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Selecting witnesses



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Selecting witnesses

- Based on chronology of facts and exhibits
 - choose the witnesses with best first-hand knowledge of each fact or document

- Make sure your witnesses are notified of hearing date well in advance
 - put it into their calendars
 - reminders

- Summons witnesses who you think will not come voluntarily:
 - Police officers usually require a summons in order to attend. Use a [Request for the Board to Issue Summons](#) form.



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Selecting witnesses

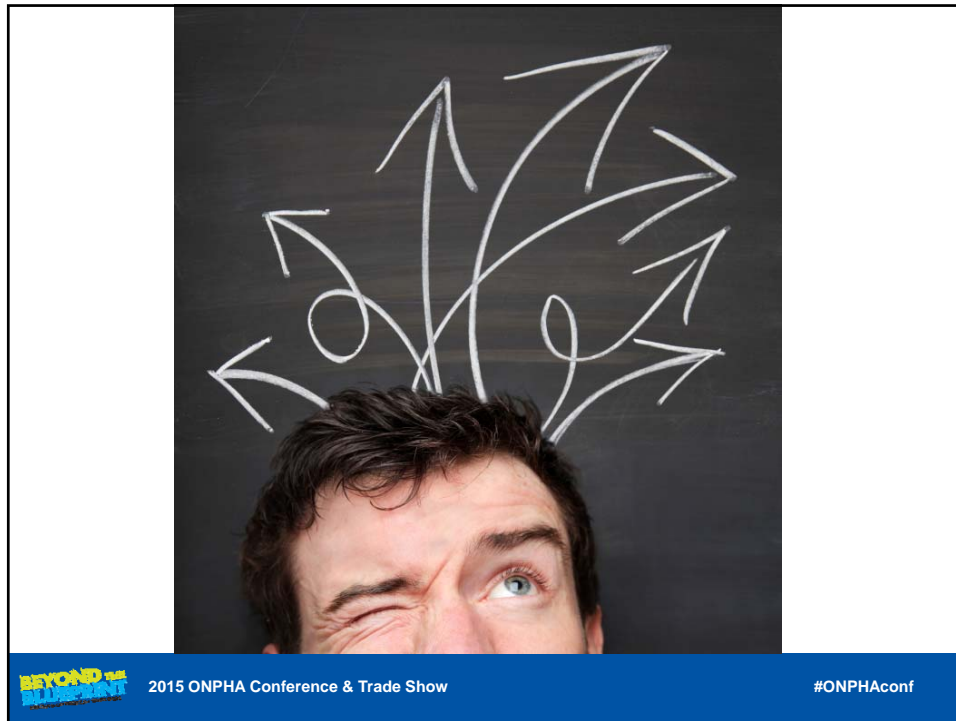
- Write name of the witness who will speak about each exhibit
 - on the back of each exhibit (only on your copy)

- Set another meeting date
 - To advise each witness type of questions you ask
 - Show each document to which you will refer
 - Lets you create first-draft of questions
 - Some witnesses may need to be prepared on day of hearing



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Prepare questions & closing

- Have a chronology
 - Facts
 - Exhibits
 - Witnesses
 - questions for each witness
 - questioning of witnesses by you is called "Examination in Chief"
- Complete question sheet for your witnesses
 - One for each witness
 - reference to exhibit numbers or name of each exhibit that relates to expected testimony



Prepare questions & closing

- Keep questions limited to issues in application
 - ask each witness about connection to case
 - e.g., staff, tenant, inspector etc.
- Know answer to each question you will ask
 - No surprises
 - No leading questions (those suggesting an answer)
- You should have closing submissions prepared prior to the hearing
 - refer to facts you know will be proven by your witnesses



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Preliminary Issues

Typical preliminary issues include:

- Adjournment request
- Raising a jurisdictional issue
- Clarification of the process
- Request for exclusion of witnesses



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Preliminary Issues (cont'd)

- Preliminary motions
- Request for disclosure by other party
- Request for special hearing block
- Request for rent payment into the Board



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Case Law

- Cases should support position you wish the Board to take
 - “based on the facts you have demonstrated”
- Leading case names for various topics (rent, maintenance, conduct)
 - LTB Interpretation Guidelines
- Recent cases, both LTB and at Divisional Court
 - www.Canlii.org
 - LTB no longer posting redacted orders



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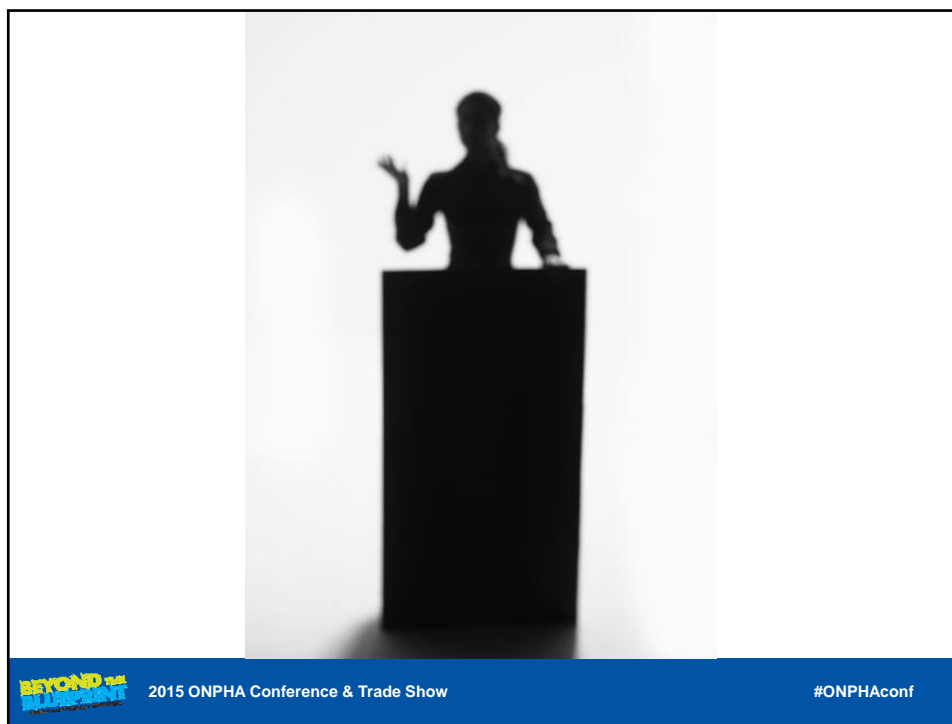
Case Law

- ONPHA may have cases helpful to your position
- You might want to consult with a legal service provider to purchase cases
- Westlaw: <http://canada.westlaw.com>
- LexisNexis (Quicklaw): <http://www.lexisnexis.ca>
- In social housing look for cases:
 - discretionary relief from eviction
 - the *Human Rights Code*



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Closing Submission

Typical closing submissions include:

- Reciting “briefly”
 - major issues you believe you have proven
 - through your evidence
 - through cross examination of other side’s witnesses.
- Describing section of statute that contains remedy or relief for which you applied
- Superimposing facts you feel you’ve proven, to section of RTA
 - Talk about public policy
 - the big picture
 - your mandate

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Closing Submission

Typical closing submissions include:

- Binding court decisions from appellate courts to show
 - how Courts have dealt with issue
 - how it might be binding on them, granting of order
- Asking for order
 - being specific about termination, conduct conditions, Costs, expedited enforcement of orders, compensation for damage etc.
- Asking for written reasons
 - if you need more than bare-bones order
 - if you anticipate filing review.



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Good luck at your hearing!



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