



Hamilton Community Legal Clinic  
Clinique juridique communautaire de Hamilton

## **EVIDENCE AT N12 AND N13 HEARINGS**

If you've received a Notice of Hearing with respect to an N12 (eviction for personal use) or N13 (eviction for renovation, demolition or conversion) notice, you should begin thinking about the evidence you want to rely on at your hearing.

You can always reach out to the Hamilton Community Legal Clinic with questions about your case, but here is some information that may assist you in getting started.

### **What is evidence?**

There are generally two kinds of evidence: (1) oral or affidavit evidence, and (2) documentary evidence.

Oral or affidavit evidence: This is where you or a witness speaks or writes out information that you know. When you tell your story at a hearing, that is evidence. When you write your story in a sworn affidavit, that is evidence.

For example: if the landlord tells you they are trying to evict you because you raise too many maintenance concerns, you would say this at your hearing and it would be evidence.

In order for evidence to be given proper weight at a hearing, it needs to be subject to cross-examination. This means that your landlord, or their legal representative, needs to be able to ask you and your witnesses questions about your evidence. If the landlord does not have the opportunity to ask questions, the evidence is considered hearsay and will be given less weight or be inadmissible.

Written evidence should be in a sworn affidavit and the witness should still appear at the hearing to be questioned. If the statement is unsworn, or the witness does not attend the hearing, their evidence will be given little or no weight.

Documentary evidence: This is any document, recording, text message, email, or anything else that you can rely on to prove what you are saying.

For example: if the landlord texts you and says they are trying to evict you because you raise too many maintenance concerns, you would provide this text message at the hearing as evidence.

It is always a good idea to provide documentary evidence when possible because it can support what you say in your oral or affidavit evidence. Without documentary evidence, it can be harder for an adjudicator to determine whose oral or affidavit evidence is most reliable.

## **What is Cross-Examination?**

When someone provides evidence to support their case, the other side typically has the opportunity to ask questions about the evidence to challenge the truth of the evidence as well as the credibility of the person giving evidence.

For example: If the landlord gives evidence that they plan to move in to your unit, during cross examination you could ask them whether they have given other tenants any N12 notices. If they have, then you could ask them whether they actually moved in after serving that notice.

If you are giving evidence at a hearing it is important to be truthful and to be consistent. If there are mistakes in the evidence you are giving, it can call your credibility into question and undermine your evidence. Sometimes people are inconsistent when providing evidence because they are nervous. It's not going to be possible to fully avoid feeling nervous, but you can help to avoid some nervousness by preparing in advance. This can involve preparing a script for yourself, reviewing documents, and speaking to a lawyer.

Certain information is only going to be in the possession of your landlord and you may want to cross-examine them to try to obtain this information.

For example: The true reason that the landlord has filed an N12 or N13 notice will often only be known by them. You might not have specific evidence to show that they don't really intend to move in to your rental unit or do repairs and renovations. In order to get more information about their intentions, you would ask them questions in cross-examination.

If you are planning to cross-examine your landlord, you should plan out your questions in advance. Your questions will depend on what kind of information you are trying to obtain from the landlord. You may want to speak to a lawyer to plan for your cross-examination.

## **What kind of evidence is useful?**

### Evidence of Bad Faith:

In order for a landlord to get an eviction order for personal use (N12) the landlord must need the unit in "good faith". If the landlord, purchaser, or other allowable occupant, doesn't actually intend to move into the unit, the notice is not given in good faith.

In order for a landlord to get an eviction for repairs, renovations, demolition, or conversion, they must sincerely intend to do the work they say they are going to do and be acting in good faith.

Bad faith can be hard to prove because you have to prove the intentions of the landlord, purchaser, or other allowable occupant. Typically they are not going to tell you that they are lying, so you need to look to other sources of evidence.

Sometimes there will be direct evidence of bad faith, such as a posting for the sale or rental of your unit. Most of the time, you will not have this kind of direct evidence.

If you do not believe that your landlord, the purchaser, or the other allowable occupant is going to move in or do the work they say they are going to do, ask yourself why you have that belief? Your belief alone will not be sufficient to prove bad faith, but the basis for your belief might lead you in the direction of obtaining the necessary evidence.

It is important to note that the decision of the landlord, purchaser, or other allowable occupant does not need to be reasonable.

For example, the fact that there is another vacant unit they could move into, the fact that there are newer or nicer units that they could move into, or the fact that your rent is lower than other units may mean that it would be more reasonable for the individual to choose another unit, but this is not necessarily relevant to the LTB.

Still, while the reasonableness of the decision to move in, renovate, demolish, etc, might not be strictly relevant, it might lead you in the right direction for uncovering their intentions and whether they are seeking an eviction in good faith. You can then use this information to inform the kinds of questions you would ask during cross-examination.

#### Evidence of your circumstances:

If the landlord succeeds in demonstrating that their N12 or N13 notice was given in good faith, you will want to provide evidence about your circumstances that can be used to delay or prevent an eviction.

The Landlord Tenant Board will consider things like:

- The ability to find other housing
- Medical needs, disability, and accessibility
- The length of the tenancy
- The impact of an eviction

The circumstances surrounding an eviction will be unique to each tenant and you should discuss with a lawyer to determine the best arguments and evidence that you can put forward to delay or prevent an eviction.

For example: This could include oral evidence where you tell your story about how an eviction will impact you. It could also include providing documentary evidence, such as medical documentation to demonstrate the impact.

### **Things to Remember**

Each case is unique. The evidence available in each case will depend on the circumstances. Just because a certain kind of evidence was successful or unsuccessful in one case, does not mean the outcome will be the same in your case.

You should contact the Hamilton Community Legal Clinic as soon as possible when you receive and N12 or N13 notice to discuss what kind of evidence will best support your case.

### **Hamilton Community Legal Clinic Contact Information:**

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### **Additional Resources:**



ACORN Hamilton is also available to help tenants organize and work together to develop strategies to prevent eviction. They cannot give legal advice, but can provide you with tenant rights education resources developed in partnership with the Hamilton Community Legal Clinic and may be able to help you develop your case by connecting with other tenants who have valuable evidence or assist with the evidence gathering process in general.

### **ACORN Hamilton Contact Information:**

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