



Evictions from a Housing Co- Operative:

Using the
*Residential Tenancies Act &
the Co-operative
Associations Act*

This document is intended as an information guide only. For specific information, refer to the *Co-operative Associations Act* and the *Residential Tenancies Act* and relevant regulations at www.novascotia.ca/rta and www.accessns.ca/co-op. You may also wish to seek legal advice for your specific circumstance.

Evictions from a Housing Co-operative

The Residential Tenancies Program and the Co-operatives Branch of Service Nova Scotia jointly developed this guide. Tenancy arrangements in housing co-operatives can be subject to the *Co-operative Associations Act* and the *Residential Tenancies Act*. The board of directors of the housing co-operative and the member/tenant should know their respective rights and obligations under these Acts.

When seeking to terminate the tenancy of a tenant in a housing co-operative, the board of directors needs to consider whether the tenant is a member.

(1) The tenant is a member of a co-operative

Housing co-operatives are member-owned and member-controlled and every member has certain rights and responsibilities. If a tenant is a member, to evict, the board of directors must exclude the member from membership in accordance with subsection 29(2) of the *Co-operative Associations Act*, and terminate the tenancy in accordance with the *Residential Tenancies Act*. These requirements were confirmed in a 2002 decision of the Nova Scotia Supreme Court (*Evangeline Courts Housing Co-operative v. Lapointe*, [2002] N.S.J. No. 392).

Although both processes may begin at the same time, the Co-operatives Branch of Service Nova Scotia recommends that housing co-operatives **complete** the exclusion process **before** attending a Residential Tenancies hearing. This avoids any unnecessary delays in the issuance of an eviction order. The decision in *Lapointe*, referenced above, required the member to be excluded prior to eviction.

A board of directors may use Form 1 (page 3) to begin the exclusion process. For more information on the exclusion process, see Section 29(2) of the *Co-operative Associations Act*, a copy of which is in this guide.

(2) The tenant is not a member of a co-operative

To evict a non-member, the board of directors must follow the *Residential Tenancies Act* only.

What is the reason for eviction?

The board of directors must also consider the reason for the eviction and follow the *Residential Tenancies Act*. You may also refer to the Residential Tenancies Guide “Terminating Your Tenancy: A Guide for Landlords” for more information.

Rental Arrears

- The tenant must be at least 3 days in arrears
- The board must serve the tenant with a 10-day notice to quit using Residential Tenancies Form D.
- The tenant will have 10 days to:
 - Pay the arrears
 - Dispute the notice
 - Leave the unit (tenant still responsible for arrears)

Failure to Comply with Statutory Conditions

- The board must serve the tenant with a 15-day notice to quit using Residential Tenancies Form E.
- The tenant will have 15 days to:
 - Dispute the notice
 - Leave the unit

All Other Reasons

- The Board must make an Application to Director using Form J.

All forms are available on the Residential Tenancies Program website.

Has the tenant taken action?

If the tenant has disputed the Notice to Quit and served the board with a Notice of Hearing, the board can file a counter-claim using Form J and requesting termination of tenancy or another action.

If the tenant has not disputed the Notice to Quit and remains in the unit, or if the tenant has left the unit and the board wants an Order of the Director respecting arrears, damage, etc., the board should file an Application to Director to enforce the notice, using Form J.

Appeal Process

If unsatisfied, either party has 10 days to file an appeal of the Order of the Director with the Small Claims Court. For more information on this process, see the Residential Tenancies Guide "After the Hearing: What Now?" located on the website.

Form 1: Notice of Exclusion from Membership

Use for members of the co-operative

Sent by registered mail on (Date) _____

To (name of tenant/member) _____

At (address of tenant/member) _____

In compliance with the *Co-operative Associations Act*, you are hereby given notice that the Board of Directors of this co-operative held a meeting in accordance with the co-operative's by-laws, and they voted in favor of excluding you from membership in the co-operative. The board has determined that you have not complied with the *Co-operative Associations Act*, or the regulations and/or the by-laws of the association as follows:

Please provide details:

You will be excluded from membership in this co-operative on the following date, which is no sooner than one month after the date of mailing this notice:

(Date of Exclusion)

If you choose to appeal exclusion from membership:

- You must notify the Board in writing within one month of the mailing date of this notice.
- In anticipation of an appeal, a meeting is scheduled to take place on:

Date: _____ Time: _____

Place (apartment, street address and city/town): _____

- The Board will notify the members of the meeting in accordance with the co-operative's by-laws.
- You will have the right to appear before the membership to give reasons why you should not be excluded from membership.
- If you do not attend the meeting, the members will be asked to decide whether or not you should be excluded from membership.
- If quorum is not present, the meeting will be adjourned for a period not less than two weeks, and if, at the adjourned meeting quorum is not present, the members present shall constitute quorum (see Section 13 of the *Co-operative Associations Regulations*).
- The outcome of the meeting will be final.

If you do not choose to appeal exclusion from membership, the Board decision will stand, and you will be excluded from membership on the date of exclusion.

Dated this _____ day of _____, 20____
(day) (month) (year)

(Representative of the Board of Directors)

(Signature)

Subsection 29(2) *Co-operative Associations Act*

A member who fails in the observance of any of the regulations or the by-laws of the association may, by resolution of the board of directors, be excluded from membership in the association whereupon he shall be entitled to a refund of any amount held to his credit in share capital or loan capital and deposits and upon which the association has no lien or other lawful claim but

(a) notice shall be sent by the board of directors by registered mail to such member to his last known address setting forth a date not sooner than one month after the date of mailing the notice upon which he is to be excluded from membership in the association and stating the reasons therefor;

(b) the member so notified, if he is not satisfied with the decision of the board, may at any time before the date upon which it is proposed that he is to be excluded from membership in the association request the board to place the matter on the agenda for consideration by the membership during the next special or general meeting of the members; and

(c) the member who has been notified that he is to be excluded from the association shall have the right to appear personally before the meeting to give reasons why he should not be excluded after which the question shall be submitted to a vote of the meeting and the decision of the meeting thereon shall be final. R.S., c. 98, s. 29.

Subsection 13 *Co-operative Associations Regulations*

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to a period not less than two weeks, and if, at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum and may proceed to transact the business for which the meeting was called.

For more information on co-operatives:

Call	902-424-7770
Toll-free	800-225-8227
Fax	902-424-4633
Email	nscoop@novscotia.ca askus@gov.ns.ca
Mail	Co-operatives Branch Service Nova Scotia P.O. Box 1529 Halifax, NS B3J 2Y4
Internet	www.accessns.ca/co-op
Visit	Your nearest Access Nova Scotia Centre

The *Co-operative Associations Act* is available online at:

<http://nslegislature.ca/legc/statutes/co-operative%20associations.pdf>

See especially section 29(2) for exclusion of members and the appeal process.

For more information on residential tenancies:

Call within HRM	902-424-5200
Toll-free	800-670-4357
Fax	902-424-0720
Email	askus@gov.ns.ca
Mail	Public Enquiries Service Nova Scotia P.O. Box 2734 Halifax, NS B3J 3K5
Internet	www.novascotia.ca/rta
Visit	Your nearest Access Nova Scotia Centre

The Residential Tenancies Act is available online at:

<http://nslegislature.ca/legc/statutes/residential%20tenancies.pdf>

See especially section 10 on the Notice to Quit, and section 17C on Appeals to Small Claims Court.