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Pandemic Evictions: An Analysis of the 2020 Eviction Decisions of Saskatchewan's Office of Residential Tenancies

SARAH BUHLER*

On 11 March 2020, the World Health Organization declared a global pandemic due to the COVID-19 virus. Saskatchewan's first COVID-19 case was detected the next day, and the Premier declared a provincial state of emergency a few days later. On March 26, the Government of Saskatchewan imposed a partial eviction moratorium, directing the Office of Residential Tenancies ("the ORT," Saskatchewan's housing law tribunal) to cease processing eviction applications for all but urgent situations involving risk to health or property. Saskatchewan's partial eviction moratorium was in place until 4 August 2020. On the day the partial moratorium was lifted, active COVID-19 cases were declining in Saskatchewan. However, the worst of the pandemic was still ahead: case numbers started rising in October, and COVID-19 cases, hospitalizations, and deaths in the province reached their peak for the year in mid-December. Thus, eviction applications for all reasons were being processed by the ORT during the most serious and deadly phase of the pandemic. Between 1 January and 31 December 2020, over 1800 eviction cases were heard by the ORT. This study sought to understand the patterns and themes in these decisions and to answer several key questions including the following: What happened during the partial eviction moratorium and after it was lifted? Did the rising case numbers in the late fall of 2020 (after the partial moratorium was lifted) affect outcomes of eviction decisions made by the ORT? What other themes or patterns emerge in the decisions? The study included decisions from January, February, and March 2020 to help provide a "pre-pandemic" comparator data set for its findings, and to be able to assess one entire calendar year of cases.

ON 11 MARCH 2020, THE WORLD HEALTH ORGANIZATION declared a global pandemic due to the rapidly spreading COVID-19 virus.¹ Saskatchewan's first COVID-19 case was detected the next day.² Six days later, Saskatchewan's Premier declared a provincial state of emergency.³ In Saskatchewan and around the world, people were exhorted to stay home to mitigate the spread of the virus. In the wake of stay-at-home orders and the public health emergency, housing advocates around the world called on governments to enact measures to protect tenants from eviction. As

* Associate Professor, University of Saskatchewan College of Law. The author wishes to acknowledge the assistance of Julia Conlon, as well as helpful feedback from Catherine Leviten-Reid, Isobel Findlay, Nazeem Muhajarine, and the anonymous reviewers. Thank you also to Janet Mosher and the JLSP student editors, especially Natalie Bravo.

¹ World Health Organization, "WHO Director-General's Opening Remarks at the Media Briefing on Covid-19 – 11 March 2020" *World Health Organization* (11 March 2020), online: <www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> [perma.cc/HL68-8YZ5].

² Colleen Book, *Saskatchewan Confirms Presumptive Case of Covid-19* (Regina: Government of Saskatchewan, 2020), online: <www.saskatchewan.ca/government/news-and-media/2020/march/12/confirmed-case-covid-19> [perma.cc/3JBN-NCS3].

³ Jim Billington & Colleen Book, *Covid-19: Saskatchewan Declares State of Emergency, Imposes Additional Measures to Protect Saskatchewan Residents*, (Regina: Government of Saskatchewan, 2020), online: <www.saskatchewan.ca/government/news-and-media/2020/march/18/covid-19-state-of-emergency> [perma.cc/2QHG-55VQ].

Bahar Shadpout of the Advocacy Centre for Tenants Ontario stated, “[h]aving more people evicted into homelessness is a terrible response during this pandemic.”⁴ In Saskatchewan, advocates petitioned the government to halt evictions to ensure that vulnerable renters could practice self-isolation and social distancing.⁵ The government briefly expressed a reluctance to intervene, stating that instead, Hearing Officers at the Office of Residential Tenancies (“the ORT,” Saskatchewan’s housing law tribunal) would take “additional evidence” relating to the pandemic into account when making their decisions.⁶ However, on March 26 the Government of Saskatchewan imposed a moratorium on all non-urgent evictions.⁷ In his announcement about the moratorium, Justice Minister Don Morgan stated that the government wanted “to ensure that tenants facing hardship as a result of COVID-19 can remain in their homes and follow all orders and recommendations from the Chief Medical Health Officer.”⁸

Saskatchewan’s eviction moratorium, which was in fact a partial moratorium because it permitted evictions for urgent situations involving risk to health or safety, was in place for a total of 131 days. Declaring that the partial moratorium would end on 4 August 2020, Minister Morgan noted that “[w]ith the success of flattening the curve in Saskatchewan, we believe it’s appropriate to lift the moratorium on non-urgent evictions.”⁹ On the day the partial moratorium was lifted, active COVID-19 cases, hospitalizations, and deaths were declining in Saskatchewan. However, the worst of the pandemic was still ahead: case numbers started rising dramatically in October, and COVID-19 cases, hospitalizations, and deaths in the province reached their peak for the year in mid-December.¹⁰ Thus, eviction applications for all reasons were being processed by the ORT during the most serious and deadly phase of the pandemic.

On 20 December 2020, months after the partial moratorium was lifted, but on a day where active COVID-19 infections in Saskatchewan were close to their highest levels,¹¹ a young, pregnant single mother of four children in Saskatoon received an eviction order because of unpaid rent. On the day of the eviction hearing at the ORT, the tenant had paid some of the outstanding arrears, but still owed about \$2,000. The tenant testified that she was experiencing financial difficulties. She proposed a payment plan to address the arrears. The landlord, a corporation, wanted an immediate eviction order, indicating that if the tenant made the payments as promised, it might not enforce the order. The Hearing Officer granted the landlord an immediate eviction

⁴ Shane Dingman, “Housing advocates push for eviction ban in response to coronavirus pandemic,” *The Globe and Mail* (16 March 2020), online: <www.theglobeandmail.com/canada/article-housing-advocates-push-for-eviction-ban-in-response-to-coronavirus/> [perma.cc/W3DM-YS9G].

⁵ Thia James, “Calls mount for Sask. Government to halt evictions during Covid-19 pandemic,” *The Saskatoon StarPhoenix* (23 March 2020), online: <thestarphoenix.com/news/saskatchewan/calls-mount-for-sask-government-to-halt-evictions-during-covid-19-pandemic> [perma.cc/FA9K-PFZB].

⁶ *Ibid.*

⁷ Noel Busse, *Evictions Suspended Due to Covid-19*, (Regina: Government of Saskatchewan, 2020), online: <www.saskatchewan.ca/government/news-and-media/2020/march/26/evictions-suspended> [perma.cc/PK96-SCJU].

⁸ *Ibid.*

⁹ Noel Busse, *Eviction Suspensions to be Lifted Government of Saskatchewan* (Regina: Government of Saskatchewan, 2020), online: <www.saskatchewan.ca/government/news-and-media/2020/july/06/eviction-suspensions-to-be-lifted> [perma.cc/W3XN-2G78].

¹⁰ Government of Saskatchewan, *Total Cases: COVID-19 Cases*, (2021), as it appeared on 8 July 2021, online: <dashboard.saskatchewan.ca/health-wellness/covid-19/cases?filter=activeCases%2Cdeaths#cumulative-cases-tab> [perma.cc/HJ4V-VEZR]; Regina Leader-Post, “Timeline: Covid-19 in Saskatchewan” *Regina Leader-Post* (17 March 2021), online: <leaderpost.com/news/saskatchewan/timeline-covid-19-in-saskatchewan> [perma.cc/9MRJ-82ZE].

¹¹ Government of Saskatchewan, *ibid.*

order, concluding as follows: “While I sympathize with the Tenant’s financial circumstances, the Tenant’s financial difficulties are not transferred to the Landlord for the Landlord to bear.”¹²

The above story illustrates one example of an eviction decision made at the height of the COVID-19 pandemic in Saskatchewan. Although no two eviction cases are the same because each one involves a specific human story, this case includes several elements that are typical or illustrative of ORT decisions made in 2020. Like so many other tenants, this tenant was facing intersecting forms of hardship. The landlord in this case, like the landlord in the majority of cases in 2020, was a corporation. Like the majority of Saskatchewan tenants who received eviction orders in 2020, this tenant was being evicted for rental arrears; like the majority of tenants, she owed less than two months’ rent when the landlord commenced eviction proceedings. The tenant, like so many other tenants in Saskatchewan, struggled to pay market rental rates.¹³ Affordable housing options were limited and difficult to access.¹⁴ Typical of most ORT eviction decisions in 2020, the Hearing Officer’s total analysis in his written decision was incredibly brief: here it was contained in just a few brief sentences. Typical also of most 2020 eviction decisions, the Hearing Officer’s reasons contained no mention of the COVID-19 pandemic (other than a note that the hearing was held by telephone due to pandemic restrictions). And, as in over ninety per cent of all cases in 2020, the landlord received an eviction order. This eviction order, like all eviction orders, authorized the Sheriff to physically remove the tenant and her family from their home. Like all eviction orders, it symbolized the power of landlord property interests and the primacy of these interests when it comes to the housing justice system.¹⁵ Like other eviction orders, this one promised to deepen the precarious circumstances of an already precariously positioned tenant.¹⁶

The above case is one of over 1,800 eviction cases that came before the ORT between 1 January and 31 December 2020. This study sought to understand the patterns and themes in these decisions and to answer several key questions including the following: What happened during the partial eviction moratorium and after it was lifted? Did the rising case numbers in the late fall of

¹² *Western Premium Property Management v Marchand*, 2020 SKORT 2393.

¹³ A recent study by the Canadian Centre for Policy Alternatives found that in Saskatchewan, an employee earning the minimum wage would have to work eighty hours a week to afford the rent of an average two-bedroom apartment. See Canadian Centre for Policy Alternatives, *Rental Wages in Canada* (2021) as it appeared on 17 May 2021, online: <www.policyalternatives.ca/rentalwages> [perma.cc/U9L9-QEV4]. In 2010, about half of Saskatoon renter households spent more than 30% of their monthly income on rent; and almost a quarter spent more than 50% of their income on rent. See Saskatoon Housing Initiatives Partnership, “Shelter Costs and Affordability” as it appeared on 17 May 2020, online: <www.shipweb.ca/new-page> [perma.cc/65EW-4JNJ].

¹⁴ See Mandy Vocke, “Affordable Housing Solutions needed for Increased Demand in Saskatoon: Experts,” *Global News* (5 November 2020), online: <globalnews.ca/news/7445640/affordable-housing-demand-saskatoon/> [perma.cc/MD2H-W5SQ].

¹⁵ On eviction as a manifestation of landlord power, see AJ van der Walt, *Property in the Margins* (Oxford: Hart Publishing, 2009) 56; Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Crown Publishers, 2016) 128–129; Maggie E Reed et al, “There’s No Place Like Home: Sexual Harassment of Low Income Women in Housing” (2005) 11 *Psychol Pub Pol’y & L* 439 at 440.

¹⁶ On the impacts of eviction, see the discussion below. This tenant’s story was later in the local news, and advocacy work by the tenant and the Elizabeth Fry Society eventually led to more stable and affordable housing for this tenant and her family. See Amanda Short, “Single mother’s difficulty finding housing points to broader issues: advocate,” *Saskatoon StarPhoenix* (9 April 2021), online: <www.thestarphoenix.com/news/local-news/single-mothers-difficulty-securing-housing-points-to-broader-issues-advocate> [perma.cc/8XTR-XU9W]. On precarity in housing in Canada during the pandemic and beyond, see Brenda Parker & Catherine Leviten-Reid, “Pandemic Precarity and Everyday Disparity: Gendered Housing Needs in North America,” *Housing & Soc* (15 October 2020), online: <www.tandfonline.com/doi/full/10.1080/08882746.2021.1922044> [perma.cc/5PGZ-H99E].

2020 (after the partial moratorium was lifted) affect outcomes of eviction decisions made by the ORT? What other themes or patterns emerge in the decisions? As discussed below, because it is likely that most evictions are “informal” (meaning that they do not go through the ORT process), this study does not tell the whole story of evictions in Saskatchewan in 2020. Rather, this work highlights one important part of this story: the story of how the ORT responded to landlord applications for evictions in one momentous year. The study included decisions from January, February, and March 2020 to help provide a “pre-pandemic” comparator data set for its findings, and to be able to assess one entire calendar year of cases.

This article proceeds as follows. It first provides some background about the ORT and its mandate and work, as well as some information about eviction law and procedure in Saskatchewan. It then discusses the study’s methodology and limitations. The article then turns to the key themes and findings from the research. These themes include tenant access to and participation in the tribunal process, types of landlords seeking eviction orders, overall decision outcomes, types of eviction orders, and post-moratorium evictions for rent arrears. This work is a contribution to the literature on housing and evictions in the pandemic,¹⁷ as well as to the empirical literature on the practices of housing law tribunals.¹⁸

I. THE OFFICE OF RESIDENTIAL TENANCIES

The Office of Residential Tenancies is an administrative tribunal that was created with the intent of providing an efficient, affordable, and accessible alternative to the court system for residential landlord and tenant disputes in Saskatchewan. Its mandate is to provide “simple, inexpensive and timely dispute resolution for landlords and tenants.”¹⁹ The ORT engages in several initiatives, including providing public information about landlord and tenant rights and responsibilities,

¹⁷ See e.g. Emily Benfer et al, “Eviction, Health Inequality, and the Spread of Covid-19: Housing Policy as a Primary Mitigation Strategy for Covid-19” (2021) 98 J Urb Health 1; Hal Pawson et al, “Covid-19: Rental Housing and Homelessness Impacts - an Initial Analysis’ ACOS/ UNSW Poverty and Inequality Partnership Report No. 7,” *UNSW Sydney* (February 2021), online: <www.researchgate.net/publication/349183661_COVID-19_Rental_housing_and_homelessness_impacts_-_an_initial_analysis> [perma.cc/8FJK-NM33]; Susan D Bennett, “Making the Second Pandemic: The Eviction Tsunami, Small Landlords, and the Preservation of “Naturally Occurring” Affordable Housing” (2020) 29 J Aff Housing & Community Dev L 157; Daniel Pessar, “Case Studies in Housing during the Coronavirus Pandemic: The Tension between Tenant Protections and a Housing Provider’s Ability to Protect Tenants” (2020) 29 J Aff Housing & Community Dev L 271; Sarah Schindler & Kellen Zale, “How the Law Fails Tenants (and Not Just during a Pandemic)” (2020-2021) 68 UCLA L Rev Discourse 146; Karen Tokarz et al, “Addressing the Eviction Crisis and Housing Instability through Mediation” (2020) 63 Wash UJL & Pol’y 243.

¹⁸ See e.g. David Wiseman, “Paralegals and Access to Justice for Tenants: A Case Study” in Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: the Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 173; Linda Lapointe, “Analysis of Evictions under the Tenant Protection Act in the City of Toronto: the Non-Profit Housing Sector” (City of Toronto, 2004), online (pdf): <www.urbancentre.utoronto.ca/pdfs/elibrary/Toronto_Non-Profit-Housing-.pdf> [perma.cc/77BH-EEVV]; Emily Paradis, “Access to Justice: the Case for Ontario Tenants Final Report of the Tenant Duty Counsel Review,” *Advocacy Centre for Tenants Ontario* (2016), online (pdf): <www.acto.ca/production/wp-content/uploads/2017/07/TDCP_Report_2016.pdf> [perma.cc/W2HD-LNUK]; Leora Smith, “The Gendered Impact of Illegal Act Eviction Laws” (2017) 52 Harv CR-CLL Rev 537; David Cowan & Emma Hitchings, “Pretty Boring Stuff: District Judges and Housing Possession Proceedings” (2007) 16 Soc & Leg Stud 363; Lauren Sudeall & Daniel Pasciuti, “Praxis and Paradox: Inside the Black Box of Eviction Court,” *Vand L Rev* (2 March 2021), online: <ssrn.com/abstract=3796279> [perma.cc/HKZ2-RJA9]; Nicole Summers, “The Limits of Good Law: A Study of Housing Court Outcomes” 87 U Chicago L Rev 145 (14 May 2019), online: <ssrn.com/abstract=3387752> [perma.cc/6ELJ-L66M].

¹⁹ Government of Saskatchewan, *Ministry of Corrections and Policing/Ministry of Justice and Attorney General Annual Report for 2019-2020* (2020) at 32.

encouraging dispute resolution between landlords and tenants, and adjudicating landlord and tenant disputes (including applications by landlords to evict tenants) through a hearing process.²⁰ The ORT is an extremely busy office. Its staff respond to tens of thousands of inquiries each year; and it holds thousands of hearings and releases thousands of decisions annually.²¹

The ORT contracts lawyers (a total of twenty-three in 2019-2020)²² to act as Hearing Officers to conduct hearings. The ORT requires Hearing Officers to possess a law degree and have experience practising law.²³ However, little information is available about the specific backgrounds, identities, or experience of individual Hearing Officers.²⁴ As lawyers, Hearing Officers are likely financially more secure than most renters in the province and it is not unreasonable to posit that most are likely to be property owners. Kathryn Sabbeth has noted in the American context that eviction decisionmakers tend to be white, male property owners, which can increase the potential for bias in favour of landlords, who the decisionmakers tend to identify more closely with.²⁵

Hearing Officers have the responsibility to preside over hearings, consider evidence presented by landlords and tenants, and render fair, impartial decisions in accordance with the law (the law is discussed below). The rules of procedural fairness and natural justice apply to hearings at the ORT. This means that tenants have the right to get notice of the hearing, a right to attend and present their side of the story to an independent and impartial adjudicator, and a right to cross-examine the landlord and the landlord's witnesses. Likewise, the landlord has the responsibility to present evidence to prove its case and the right to cross-examine the tenant. Although the formal rules of evidence do not apply in ORT hearings,²⁶ Hearing Officers must weigh the credibility of witnesses and the quality of evidence.²⁷ Finally, Hearing Officers must provide "proper and sufficient" written reasons for their decisions, meaning that "the decision-maker's path of reasoning must be clear and understandable."²⁸ These demands of natural justice and procedural fairness operate in a real-world context where Hearing Officers typically hear multiple cases in a day and usually release their decisions within a few days.²⁹ It is clear, then, that Hearing Officers work under conditions involving immense workloads and short turnaround times. As Lorne Sossin has noted, heavy workloads can mean that administrative decisionmakers are constrained in their ability to comprehensively fulfill their duties.³⁰

²⁰ *Ibid.*

²¹ *Ibid* at 34; see also Provincial Auditor of Saskatchewan, *2021 Report - Volume I: Report of the Provincial Auditor to the Legislative Assembly of Saskatchewan* (8 June 2021) at 111.

²² Government of Saskatchewan, *supra* note 19 at 33; Provincial Auditor of Saskatchewan, *ibid* at 111.

²³ Provincial Auditor of Saskatchewan, *ibid* at 117.

²⁴The author was unable to find any information about the backgrounds of Hearing Officers. This is consistent with the lack of information more generally about diversity in the legal profession. See Tom Wilbur, "The diversity data gap: Canadian law firms' reluctance to gather and publish may be about to change," *Canadian Lawyer* (12 November 2021), online: <www.canadianlawyermag.com/resources/practice-management/the-diversity-data-gap-canadian-law-firms-reluctance-to-gather-and-publish-may-be-about-to-change/335206> [perma.cc/JY4P-NHJ7].

²⁵ Kathryn A Sabbeth, "Housing Defense as the New Gideon" (2018) 41 *Harv JL & Gender* 55 at 79.

²⁶ See *Residential Tenancies Act*, 2006, SS 2006, c R-22.0001, s 75 [RTA].

²⁷ On the duty to assess credibility of witnesses, see *Ottenbreit v Paul*, 2015 SKQB 326.

²⁸ *Olson v Hergott*, 2021 SKQB 11 at para 11.

²⁹ See Provincial Auditor of Saskatchewan, *supra* note 21 at 125. The average time between a hearing and the decision being released to the parties is 3.4 days.

³⁰ Lorne Sossin, "Access to Administrative Justice and Other Worries" in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 2d Edition (Toronto, ON: Emond Montgomery Publications, 2013) at 19.

COVID-19 dramatically affected the operations of the ORT. Although the ORT has always held some hearings by telephone (especially for parties not located in Saskatoon and Regina), on 17 March 2020 the ORT moved all hearings to a telephone hearing system. In an official Directive published that day, the ORT stated that the move to telephone hearings was undertaken in response to public health measures.³¹ The Directive noted that the ORT “is committed to taking the steps necessary to safeguard the health and safety of everyone utilizing our services while ensuring access to justice and continuing business operations as effectively and efficiently as possible.”³² Fewer than ten days later, the ORT was again making operational changes in response to the March 26 provincial partial eviction moratorium. In a Directive published the day that the partial moratorium was announced, the ORT explained that it would no longer be accepting applications for evictions due to late or unpaid rent, or other “non-urgent” claims.³³ The Directive continued: “[t]he ORT will only be conducting hearings for *urgent situations where there is a potential risk to health or safety resulting from violence or damage to property.*”³⁴ As noted above, the moratorium was lifted on 4 August 2020, meaning that eviction applications for all reasons could resume on that date. However, hearings continued to be held solely by telephone for the remainder of the year. While in-person hearings were open to the public prior to the pandemic, telephone hearings were not accessible to members of the public.³⁵

II. INFORMAL AND FORMAL EVICTIONS AND SASKATCHEWAN EVICTION LAW

As noted above, this study does not tell the whole story of evictions in Saskatchewan. That is because the focus of this research is *formal evictions*—defined by Sarah Zell and Scott McCullough as evictions “enacted through a legal procedure.”³⁶ It is likely, however, that most evictions are “informal evictions” that occur outside the formal legal process. As Zell and McCullough explain, informal evictions happen when tenants “abandon their housing or leave ‘voluntarily’ ... following a range of actions, from a simple landlord request that a tenant vacate their unit to actions by a landlord that effectively force a tenant to leave.”³⁷ This can include situations involving landlord harassment, landlords locking tenants out or situations where rent increases exceed tenants’ ability to pay, leading to tenants’ involuntary displacement.³⁸

Both formal and informal evictions unfold within a social and economic context where power between landlords and tenants is significantly uneven. Landlords are property owners by definition and most possess significantly greater financial, social, and political capital than their tenants. In contrast, the subset of tenants who find themselves subject to informal or formal

³¹ Office of Residential Tenancies, “Directive and Advisory Respecting Covid-19 as of March 17, 2020” [ORT Directive 17 March] (on file with author).

³² *Ibid.*

³³ Office of Residential Tenancies, “Directive and Advisory Respecting Covid-19 as of March 26, 2020” (on file with author).

³⁴ *Ibid.*, emphasis added.

³⁵ Confirmed by personal conversation of author with ORT representatives.

³⁶ Sarah Zell & Scott McCullough, “Housing Research Report: Evictions and Eviction Prevention in Canada,” *Canada Mortgage and Housing Corporation* (May 2020) at iii, online (pdf): <eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/archive/research_6/evictions-and-eviction-prevention-in-canada.pdf> [perma.cc/FXH4-G2EW].

³⁷ *Ibid.* at iii–iv.

³⁸ *Ibid.* at iv.

evictions are often experiencing compounded layers of hardship and vulnerability rooted in wider societal inequities. They are more likely than most tenants to be experiencing deep poverty, to have experienced homelessness in the past, and to have faced discrimination based on race, ethnicity, gender, and/ or disability.³⁹ As Emily Paradis noted in her study of tenants' experiences at Ontario's housing law tribunal, eviction proceedings are very often the result of "multiple, intersecting inequities, injustices, and experiences of discrimination and marginalization."⁴⁰ Thus, eviction does not play out in anything resembling a level playing field.

Just as this study cannot capture informal evictions in Saskatchewan, it also fails to capture stories of the myriad strategies and practices that prevent eviction. These include formal eviction prevention programs implemented by some landlords⁴¹ as well as individual instances of care and consideration that arise in some landlord-tenant relationships.⁴² We know that in Saskatchewan during the pandemic, some landlords reduced rent, or took other steps to work with tenants instead of pursuing eviction applications.⁴³ We also know that the ORT worked with landlords and tenants through its dispute resolution process to avert many evictions in 2020. Indeed, the ORT notes in its 2019-2020 annual report that an increased emphasis on dispute resolution led to an overall decrease in cases that went to a hearing.⁴⁴

Although formal evictions are likely only a fraction of all evictions, it remains important to understand how evictions are governed and adjudicated within the legal system. This is because the formal system casts a "shadow" over landlord and tenant relationships more broadly.⁴⁵ That is, the formal eviction system creates a sense of what is possible, and whose stories and interests are prioritized and valued. When, as we see in this study, it becomes clear that the formal system will almost always move to eviction and will almost always value landlord interests over tenant interests, it is likely that individual tenants will decide to simply move out when they receive a notice that a landlord is commencing eviction proceedings.

In Saskatchewan, formal evictions are governed by *The Residential Tenancies Act, 2006* ("the Act").⁴⁶ Landlords can apply for an eviction, called an "order for possession," under several key sections of the Act. The most-used ground for eviction is section 57, which permits landlords to end a tenancy after the tenant is fifteen days or more late with their rent. The landlord initiates

³⁹Emily Paradis & Tracy Heffernan, "Preventing Homelessness by Preventing Eviction," *Homeless Hub* (24 November 2016), online: <homelesshub.ca/blog/preventing-homelessness-preventing-eviction> [perma.cc/3AWT-XEX9].

⁴⁰Paradis, *supra* note 18 at 82.

⁴¹See Acacia Consulting & Research, *Policy Discussion Paper on Eviction and Homelessness: Stakeholder Perspectives on a Role for Human Resources and Social*, (Ottawa, 2006), online (pdf): <www.homelesshub.ca/sites/default/files/attachments/policy_discussion_paper_on_eviction_and_homlessness.pdf> [perma.cc/QPZ7-2FGN]; Jino Distasio & Scott McCullough, "Eviction Prevention: Toolkit of Promising Practices," *Institute of Urban Studies, University of Winnipeg* (May 2016), online (pdf): <winnipeg.ca/bitstream/handle/10680/1200/2016%20Eviction%20Prevention%20Toolkit.pdf?sequence=4&isAllowed=y> [perma.cc/W7NA-5NEB].

⁴²See e.g. Annie Nova, "He was 4 months behind on his rent: Why his landlord never mentioned eviction," *CNBC* (20 March 2021), online: <www.cbc.com/2021/03/20/why-one-landlord-never-threatened-eviction-despite-late-rent.html> [perma.cc/KTL5-NPF9].

⁴³See Bonnie Allen, "Landlords say poor tenants who received CERB can't make rent after losing social assistance," *CBC News* (22 November 2020), online: <www.cbc.ca/news/canada/saskatchewan/landlords-tenants-cerb-rent-1.5810230> [perma.cc/U4YR-YPTK].

⁴⁴See Government of Saskatchewan, *supra* note 19 at 33.

⁴⁵See Andrew Roesch-Knapp, "The Cyclical Nature of Poverty: Evicting the Poor" (2020) 45 *Law & Soc Inquiry* 839 at 846–848.

⁴⁶RTA, *supra* note 26.

the eviction for unpaid rent by posting a notice to the tenant that the tenancy has ended because rent is fifteen days or more in arrears. It is likely that many tenants move out after receiving this initial notice, meaning that the notice triggers an “informal eviction” as described above. It is likely that many other tenants pay their arrears or make a payment plan with their landlord after receiving a notice of this kind. Indeed, Lillian Leung and her colleagues have recently argued that many landlords issue eviction notices not because they intend to displace the tenant, but specifically as a strategy to induce payment (and, often, the collection of additional fees).⁴⁷

If a tenant does not vacate their home after receiving the notice referred to above, the landlord can apply for a hearing at the ORT asking for an order for possession. However, eviction is not automatic just because a tenant is in arrears of rent and has not vacated their home. The Act is clear that the Hearing Officer has the ability to make any order that is “just and equitable” in the circumstances.⁴⁸ The importance of this equitable jurisdiction possessed by Hearing Officers has been emphasized over the years by the Saskatchewan Court of Queen’s Bench.⁴⁹ As the Court has explained, what is “just and equitable” in any given situation depends “in part on the context and in part on the facts.”⁵⁰ This means that a Hearing Officer is able to do what is “just, fair and right, in consideration of the facts and circumstances of the individual case.”⁵¹ In other words, Hearing Officers must not take a rigidly legalistic and formulaic approach when they interpret the Act but must exercise their equitable jurisdiction.⁵²

Although evictions for arrears are most common, landlords may, in certain circumstances, also end tenancies because of tenant behaviours. These circumstances are set out in section 58 of the Act. Examples of tenant actions that could lead to a section 58 eviction application include repeated late rent payments, breaches of rules about smoking, damage to property, or incidents where the tenant (or the tenant’s guests) engage in activities that put neighbours at risk. In most cases, the landlord must give the tenant a reasonable amount of time to remedy the problem; and then must provide the tenant with at least one month’s notice to end the tenancy.⁵³ However, in urgent situations where “it would be unreasonable to wait” for the one month notice to take effect, section 68 of the Act allows landlords to apply immediately for an order for possession. During the period of the partial moratorium, only section 68 eviction applications were permitted to proceed. Again, Hearing Officers are required by the Act to consider whether eviction is “just and equitable” in the circumstances.⁵⁴

Finally, the Act provides several other ways that landlords can end tenancies and evict tenants. These include situations where the landlord’s close family member intends in “good faith to occupy the rental unit,”⁵⁵ or if the landlord intends in good faith to sell the unit or undertake

⁴⁷ Lillian Leung, Peter Hepburn & Matthew Desmond, “Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement” (2020) Soc Forces 1 at 2.

⁴⁸ RTA, *supra* note 26, s 70(6).

⁴⁹ See e.g. *Hart v Hunchak*, 2015 SKQB 117; *Williams v Elite Property Management Ltd*, 2021 SKQB 46 [Williams].

⁵⁰ *Williams*, *ibid*.

⁵¹ *Donnelly v Dupuis*, 2007 SKQB 481.

⁵² See *Williams*, *supra* note 49 at para 28.

⁵³ See RTA, *supra* note 26, s 58(5). A tenant can dispute the notice pursuant to section 58(5) and is deemed to accept the end of the tenancy if they do not dispute the notice. A number of appeal cases have interpreted the effect of the requirement for tenants to dispute the notice and have held that if the tenant does not dispute the notice in writing, then in the absence of compelling circumstances a Hearing Officer should grant the order for possession. See *Rafique v Sharma Investments Limited*, 2008 SKQB 143; in other words, Hearing Officers must still consider whether there are compelling tenant circumstances at play.

⁵⁴ See RTA, *supra* note 26, s 70(6).

⁵⁵ *Ibid*, s 60(4).

necessary renovations or repairs to the unit.⁵⁶ An order for possession can also be obtained where a “fixed-term” lease has come to an end, has not been renewed, and a tenant has not vacated, or where a tenant has been employed by the landlord and this employment has come to an end.⁵⁷ Again, Hearing Officers are directed by the Act to make an order that is “just and equitable” in the circumstances.⁵⁸

Landlords and tenants can appeal decisions of Hearing Officers to the Saskatchewan Court of Queen’s Bench. However, the Court only considers errors of law or jurisdiction.⁵⁹ Practically speaking, appeals are expensive and inaccessible for many tenants, especially after a 2018 amendment to the Act which requires that in order to file an appeal, a tenant who appeals a decision pertaining to unpaid rent must pay the rent owing to the landlord.⁶⁰ Indeed, in 2019-2020, only 1.7% of ORT decisions were appealed to the Court of Queen’s Bench.⁶¹ Jonnette Watson Hamilton has written about the multiple barriers facing tenants who seek to appeal residential tenancies decisions in Alberta; many of the barriers and issues that she writes about are applicable to tenants in Saskatchewan.⁶² It is simply the case that pursuing an appeal is unrealistic for many tenants who receive an eviction order. Thus, it is vitally important as an access to justice matter that decisions of the ORT be fair, just, and legally correct at the first instance.

III. THE IMPACTS OF EVICTION AND COVID-19

Research has established that stable and secure housing is a fundamental social determinant of health.⁶³ Eviction can trigger multiple and compounding negative impacts, including trauma, homelessness, fragmentation of families, loss of work and educational opportunities, and adverse mental and physical health consequences.⁶⁴ Kathryn Sabbeth explains that the effects of eviction “radiate outward,” affecting not only individual tenants, but also entire families, neighbourhoods,

⁵⁶ *Ibid*, s 60(7).

⁵⁷ *Ibid*, s 59.

⁵⁸ *Ibid*, s 70(6).

⁵⁹ *Ibid*, s 72.

⁶⁰ *Ibid*, s 72(1.3).

⁶¹ Provincial Auditor of Saskatchewan, *supra* note 21 at 128.

⁶² Jonnette Hamilton, “Expensive, Complex Appeals from Residential Tenancy Dispute Resolution Service Orders” *ABLawg* (16 July 2015), online (pdf): <ablawg.ca/wp-content/uploads/2015/07/Blog_JWH_Nee_v_Ayre__Oxford_Inc_July_2015-1.pdf> [perma.cc/TMM9-DHWY].

⁶³ Lauren A Taylor, “Housing and Health: An Overview Of The Literature,” *Health Affairs* (7 June 2018), online: <www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/> [perma.cc/F7V2-VPMU].

⁶⁴ Numerous sources have documented the adverse impacts of eviction. See *e.g.* Chester Hartman & David Robinson, “Evictions: the Hidden Housing Problem” (2003) 14 *Housing Pol’y Debate* 461 at 468; Alexandra B Collins et al, “Surviving the Housing Crisis: Social Violence and the Production of Evictions among Women who use Drugs in Vancouver, Canada” (2018) 51 *Health & Place* 174; Rebecca Zivanovic et al “Eviction and loss of income assistance among street-involved youth in Canada” (2016) 37 *J Pub Health Pol’y* 244; John Ecker, Sarah Holden & Kaitlin Schwan, *An Evaluation of the Eviction Prevention in the Community (EPIC) Program*, (Toronto, ON: Canadian Observatory on Homelessness Press, 2018), online (pdf): <www.toronto.ca/wp-content/uploads/2018/10/8ea4-EPIC_Summary_Report_AODA.pdf> [perma.cc/2AQF-73SD].

and communities.⁶⁵ As Sabbeth has written, “[g]iven the centrality of housing to human life, the loss of housing creates significant damage.”⁶⁶

The COVID-19 pandemic further compounded the damaging impacts of eviction. Studies have established that eviction during the pandemic was associated with higher risks of contracting the virus, and that eviction prevention was an important public health strategy for mitigating the spread of the virus.⁶⁷ People experiencing eviction and its aftermath were less likely to be able to access health care and testing.⁶⁸ Furthermore, eviction is associated with increased risk of homelessness, couch surfing, and overcrowding, which made it difficult to effectively quarantine or practice social distancing.⁶⁹ Thus, as the pandemic took hold, it became apparent that stable housing was an important aspect of any strategy to combat the virus. As the United Nations Special Rapporteur on the Right to Adequate Housing stated, “[h]ousing has become the front-line defence against the coronavirus. Home has rarely been more of a life or death situation.”⁷⁰ The Special Rapporteur called on countries to take “extraordinary measures to secure the right to housing for all to protect against the pandemic.”⁷¹ Likewise, public health researchers and advocates called on governments to halt evictions as a “critical component of any comprehensive strategy to control the COVID-19 pandemic.”⁷²

IV. METHODOLOGY AND LIMITATIONS

As discussed above, this study does not tell the whole story of evictions in Saskatchewan. It does not tell the story of informal evictions; nor does it tell the story of eviction prevention practices, including the informal dispute resolution work of the ORT. This study thus presents a partial picture, focussing on the statistics and trends of the ORT’s formal eviction decisions. Finally, this study does not tell the human story of evictions in Saskatchewan in 2020. It is important that readers keep in mind that each statistic represents a person or a family, that each eviction has

⁶⁵ See Kathryn A Sabbeth, “Housing Defense as the New Gideon” (2018) 41 Harv JL & Gender 55 at 64-69; Matthew Desmond & Rachel T Kimbro, “Eviction’s Fallout: Housing, Hardship, and Health” (2015) 94 Soc Forces 295; Clark Merrefield, “Eviction: the Physical, financial and mental health consequences of losing your home,” *The Journalist’s Resource* (8 March 2021), online: <journalistsresource.org/economics/evictions-physical-financial-mental-health/> [perma.cc/9USN-5NQU].

⁶⁶ Sabbeth, *ibid* at 66.

⁶⁷ See Yael Cannon, “Injustice Is an Underlying Condition” (2020) 6:2 U Pa JL & Pub Aff 201 at 240-242 for a discussion of the health consequences of eviction in a pandemic. See also Benfer et al, *supra* note 17.

⁶⁸ Benfer et al, *supra* note 17 at 2.

⁶⁹ *Ibid* at 2; see also Cannon, *supra* note 67 at 240.

⁷⁰ United Nations Human Rights Office of the High Commissioner, “‘Housing, the front line defence against the COVID-19 outbreak,’ says UN expert,” *United Nations Human Rights Office of the High Commissioner* (18 March 2020), online: <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E> [perma.cc/8WKE-WFJ2]. Balakrishnan Rajagopal, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context,” *United Nations* (27 July 2020), online: <www.undocs.org/A/75/148> [perma.cc/4J3U-HHYL].

⁷¹ United Nations Human Rights Office of the High Commissioner, *ibid*.

⁷² Emily Benfer et al, *supra* note 17 at 2; Amy Norton, “Bans on Evictions, Utility Shutoffs Are Curbing COVID Infections: Study,” *US News* (8 February 2021), online: <www.usnews.com/news/health-news/articles/2021-02-08/bans-on-evictions-utility-shutoffs-are-curbing-covid-infections-study> [perma.cc/E9DF-3N5Y]; Anjalika Nande et al, “The effect of eviction moratoria on the transmission of SARS-CoV-2” (19 January 2021), online: <www.medrxiv.org/content/10.1101/2020.10.27.20220897v2> [perma.cc/37XR-ULEQ]; Nicoletta Lanese, “Evictions would raise COVID-19 risk for everyone,” *Live Science* (10 November 2020), online: <www.livescience.com/eviction-moratoriums-coronavirus-spread.html> [perma.cc/K6TG-FE88].

potentially long-term negative consequences for tenants, and that everyone impacted by eviction has a story.

The ORT publishes its written decisions on Canlii, Canada’s free online legal database.⁷³ Saskatchewan eviction decisions were located by using the search terms “order for possession” AND “order of possession”⁷⁴ and by limiting the search timeframe to 2020. This search led to 1,886 results. A few of these decisions turned out to not in fact be eviction decisions and these were excluded from the study. The final dataset was 1,850 decisions.⁷⁵

The author created a coding framework, which was refined during the initial stages of the research as themes emerged organically. The author read each decision and manually coded for information including:

- whether the tenant appeared or not
- whether the landlord was a corporate entity, an individual, an affordable housing provider, or another type of entity
- the ground for eviction being advanced by the landlord (*i.e.*, whether the eviction was for unpaid rent, alleged tenant behaviours, or for another reason
- the outcome of the hearing—including what “type” of eviction order was made, and if the landlord’s application was dismissed, whether it was dismissed for technical or substantive reasons; and
- for evictions involving arrears, the number of months of rent the landlord claimed were in arrears.

Once the coding process was complete, the author manually counted the cases in each category. The project also involved tracking other details about the cases and the reasoning of the Hearing Officers in their decisions; however, these findings are not covered in this article and will be reported elsewhere.

Limitations include possible mistakes in the decisions themselves—for example, it is possible that a decision lists a tenant as not having been present when in fact the tenant was present. Some decisions did not include all the information being coded. Aspects of decisions may have been misclassified in some instances, and it is possible that minor inaccuracies in counting and tabulating results occurred. Potential errors were mitigated by double-checking most of the data and results and engaging a student research assistant to read and code a portion of the cases in order to have some of the cases subjected to more than one reading and analysis.

V. FINDINGS

A. OVERALL EVICTION PATTERNS IN 2020

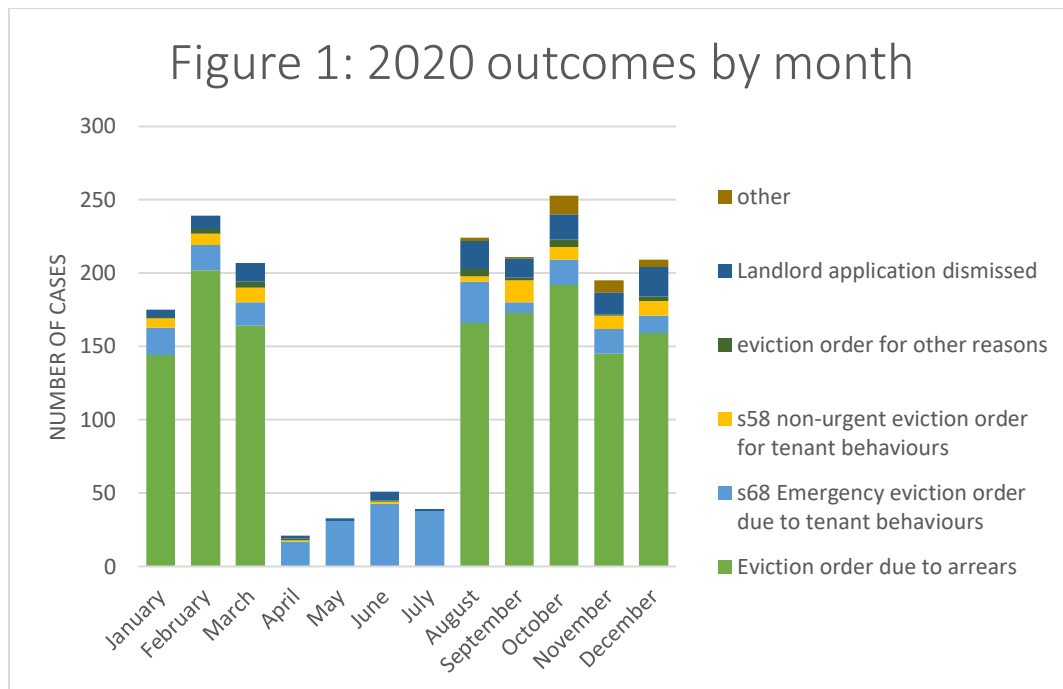
Patterns and outcomes for eviction applications at the ORT 2020 are illustrated in Figure 1. What jumps out immediately in the chart is the impact of the partial eviction moratorium, which

⁷³ See Canlii, “What’s Canlii,” online: <www.canlii.org/en/info/about.html> [perma.cc/H4MU-8RYJ]. According to the Deputy Directors of the ORT, all ORT decisions are published on Canlii. See Tyler Young & Andrew Restall, “Office of Residential Tenancies: the Impact of Covid-19,” CBA Saskatchewan, BarNotes (Winter, 2020) 19 at 19.

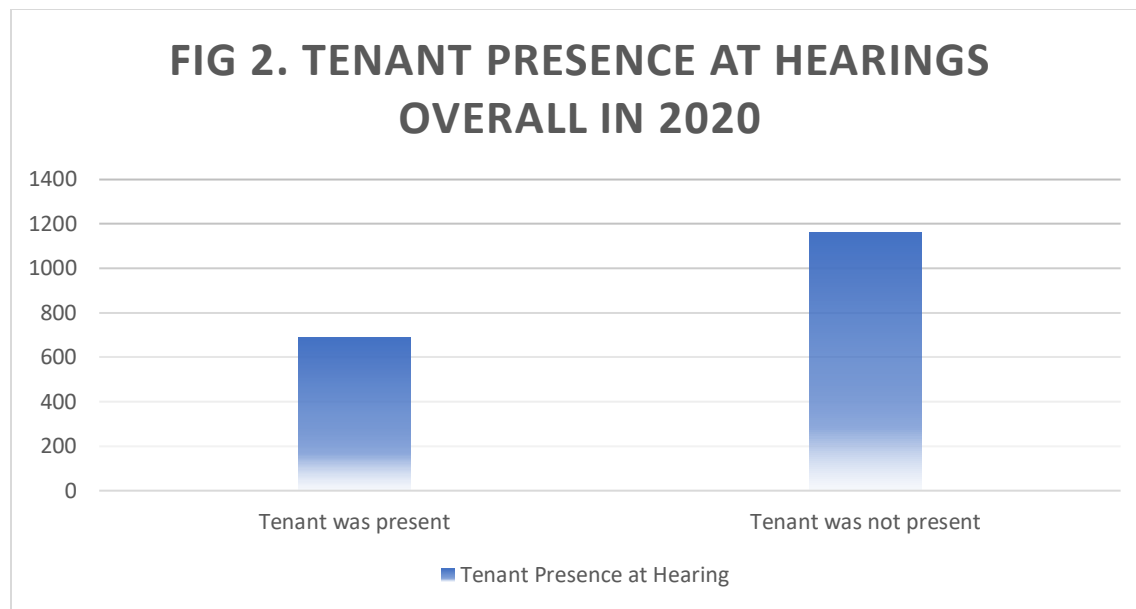
⁷⁴ It appeared that some decisions used the term “order of possession” so this phrase was included.

⁷⁵ It is possible that some decisions were missed due to researcher error or if for some reason the decision did not include the term “Order for possession.” However, “order for possession” is the name of the order being sought so should be included in all decisions.

prohibited evictions for non-urgent reasons, including rental arrears. The number of eviction orders was dramatically lower than usual during the entire time period of the partial moratorium. However, urgent/emergency eviction hearings were permitted during the moratorium, and the chart shows that a higher number of such applications were made during the moratorium period as compared to non-moratorium months. The second observation is that in non-moratorium months, the largest number of eviction cases involved unpaid rent/rent arrears. A third observation is that post-moratorium, the number of eviction hearings and types of applications was broadly similar to patterns in the months prior to the pandemic. The chart also makes it clear that landlords are almost always successful in obtaining eviction orders. These themes and findings will be explored in more detail below.



B. ACCESS TO THE TRIBUNAL: PRESENCE AND PARTICIPATION IN HEARINGS



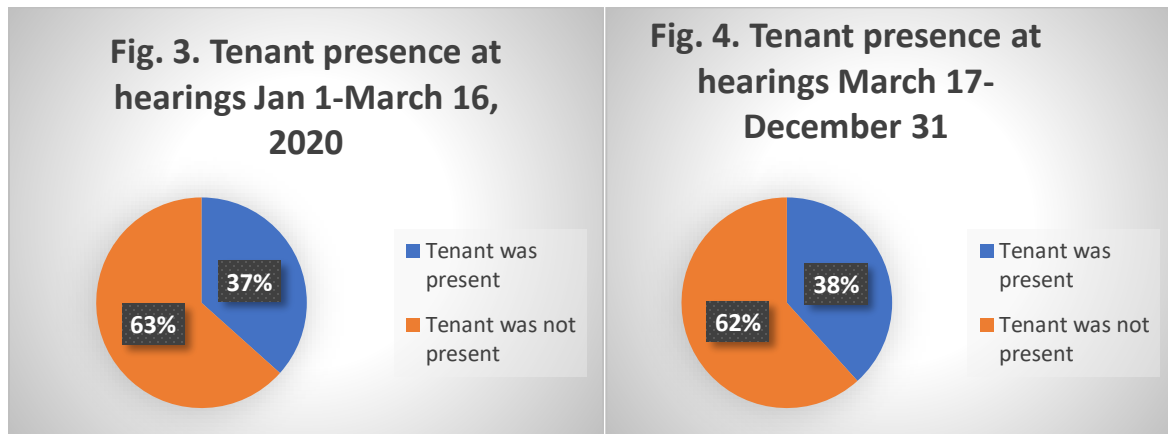
An important theme from the research is the issue of tenant presence and participation in eviction hearings. As noted above, the ORT moved all hearings to a telephone hearing system on 17 March 2020, in response to the COVID-19 pandemic. The research sought to investigate whether this change created barriers for tenant participation.⁷⁶ Interestingly, in terms of tenants' actual presence at hearings, there was in fact no meaningful change pre- and post-implementation of the telephone hearing system. About 37% of tenants attended their eviction hearing before March 17 (see Figure 3), and about 38% of tenants attended their eviction hearings after March 17 (see Figure 4). This is lower than the percentage of tenants who attended digital housing law hearings in Ontario during the pandemic: the Advocacy Centre for Tenants Ontario reported that 44.6% of tenants attended digital hearings at Ontario's housing law tribunal.⁷⁷ In 2020, it appears that fewer than two dozen tenants had lawyers to assist them at their eviction hearings: in Saskatchewan, Legal Aid does not assist with housing law matters, and very few agencies provide legal assistance with housing law matters in the province.⁷⁸ While this shows that the move to a telephone hearing system was not associated with a change in overall attendance by tenants at hearings, the statistics nevertheless raise serious concerns about tenants' access to the tribunal and

⁷⁶ Concerns have been raised in other jurisdictions regarding hearings during the pandemic. In Ontario for example, reports of a "chaotic" online hearing system for evictions has led to fairness concerns by housing advocates. See The Canadian Press, "People are being shown no mercy': online evictions raise alarm in Ontario," *CTV News* (26 December 2020), online: <toronto.ctvnews.ca/people-are-being-shown-no-mercy-online-evictions-raise-alarm-in-ontario-1.5245348?cache=ahqqxyvsa%3Fautoplay%3Dtrue%3FclipId%3D68596> [perma.cc/8WF5-MB2J].

⁷⁷ Advocacy Centre for Tenants Ontario, "Digital Evictions: the Landlord and Tenant Board's Experiment in Online Hearings" (2021) at 3, online (pdf): <www.acto.ca/production/wp-content/uploads/2021/06/Digital-Evictions-ACTO.pdf> [perma.cc/55B7-FR7P].

⁷⁸ See Legal Aid Saskatchewan, "About Us," online: <www.legalaid.sk.ca/about/index.php> [perma.cc/VF87-52Y9]. Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) and Pro Bono Law Saskatchewan provide some housing law advice and representation to eligible tenants. See Pro Bono Law Saskatchewan, "About Us," online: <pblsask.ca/about-us/> [perma.cc/L9CR-9CYL]; CLASSIC, "What We Do: Classic Programs," online: <www.classiclaws.ca/what-we-do.html> [perma.cc/UES2-KWEX].

participation in hearings. A significant majority of tenants were not present at their eviction hearings in 2020, and in almost every case, an eviction order was made in their absence.



What explains these low levels of participation by tenants in eviction hearings, both before and during the pandemic? In many cases where the tenant did not appear, there was no discussion in the written decision about why the tenant was not present. The reader is left with no insights into whether anyone attempted to contact the tenant, or if the landlord had any idea about why the tenant might not have shown up or called in. However, most decisions document the efforts (sometimes multiple efforts) made by the Hearing Officer to contact the tenant to try to ensure they were able to participate. In a majority of these decisions, the Hearing Officer records that there was simply no answer when the Hearing Officer called. But in a significant number of cases, the Hearing Officer notes that the tenant’s phone number was out of service, or unable to receive calls or messages. Other decisions simply note that there was no number on file for the tenant at all. Many decisions conclude that given the tenant’s choice not to appear, the hearing proceeded without the tenant.

When Hearing Officers frame tenant non-participation as “choice,” they ignore some important considerations. We know that people who are financially insecure may be unable to afford cell phones or data plans and may experience deactivation of cell phone accounts or disconnection of land lines.⁷⁹ Furthermore, during the pre-pandemic period it is likely that some tenants were unable to physically attend their hearing due to transportation barriers, or other factors (for example, childcare responsibilities or health issues). As discussed earlier, we know that tenants facing eviction are more likely to be experiencing multiple hardships in addition to their housing issues.⁸⁰ Certainly the pandemic should have brought possible health-related barriers to the forefront for Hearing Officers. It is therefore likely that some of the tenants who are recorded in the decisions as having made a “choice” not to appear in fact were unable to appear because of health, technological, financial, logistical, or other barriers.

However, there are almost certainly other issues at play. For many tenants, the “choice” not to appear at an eviction hearing is made within a context of deep structural inequalities where factors including histories of trauma experienced at the hands of institutions, including justice

⁷⁹ See David Thurton, “Pandemic drives calls for universal affordable internet and cell plans,” *CBC News* (25 May 2020), online: <www.cbc.ca/news/politics/pandemic-covid-coronavirus-internet-cell-1.5581605> [perma.cc/56TA-9WG2].

⁸⁰ See *e.g.* Paradis, *supra* note 18 at 82.

institutions, are ever present.⁸¹ Further, it must be considered whether many tenants know all too well what is likely to happen at an eviction hearing at the ORT: their chances of averting an eviction, regardless of their circumstances or the evidence they present, are very, very small. Indeed, this research found that tenant appearance at hearings had no meaningful impact on outcomes: landlords win their cases over 90% of the time both in cases where tenants were present and in cases where tenants were absent. However, it should be noted that tenants who appear at hearings are more likely to obtain delayed or “honour system” eviction orders (these types of eviction orders provide tenants with more time to move out or even to save their tenancy and are discussed later in this article).⁸² With the odds stacked against them to such an overwhelming extent, is it surprising that many tenants would not appear at their eviction hearing? As a tenant remarked in a recent qualitative study of tenant experiences in Saskatchewan, “Because a lot of people ... when they have problems with the [ORT] or with the Landlords and things like that, most people will just pack up and bounce out ... I don’t even bother wanting to be involved with the [ORT] anymore. As soon as I get an eviction notice ... I’m already packing.”⁸³

This connects directly to the finding in this research that the approximately 37% of tenants who *did* participate in their hearing also usually faced eviction. In many decisions where the tenant is recorded as having been present, there is no indication about what the tenant said. These decisions were coded in the research notes as ones where the tenant was given “no voice”—and there are scores of such decisions. We know that tenant evidence is relevant to the “just and equitable” analysis that Hearing Officers are required to undertake. When no record of tenant evidence appears in a decision where the tenant was present at the hearing, it becomes impossible to know if and how such analysis was undertaken. On the other hand, in decisions where information about tenants’ situations is documented, those tenants also usually faced eviction—whether they had been hospitalized with COVID, or had already paid most (or all) of their arrears, or struggled with the choice to pay rent or feed their child.⁸⁴

We know, of course, that tenants have voices. The challenge for the ORT is to make sure these voices are heard more often, and more clearly. This is important for any tribunal that seeks to take access to justice seriously. It is even more important for a tribunal whose decisions impact people’s need for shelter, which Canada has recognized as a fundamental human right.⁸⁵ The ORT has invested significant resources in providing accessible and clear information to tenants about applicable law and procedures.⁸⁶ These initiatives are important, but it appears that more could be done. It is beyond the scope of this article to delve deeply into possible solutions, other than to note that one possible solution is to provide legal aid for tenants. Other jurisdictions—for example, Ontario—provide Legal Aid assistance to tenants, including through duty counsel programs.⁸⁷ Studies in the United States show improved outcomes and lower rates of eviction for tenants who

⁸¹ For a discussion of the experiences of some Saskatchewan residents with the justice system, see Sarah Buhler, “Don’t Want to Get Exposed: Law’s Violence and Access to Justice” (2017) 26 J L & Soc Pol’y 68.

⁸² This research did not calculate the exact numbers. For details about types of orders see below.

⁸³ See Sarah Buhler & Rachel Tang, “Navigating Power and Claiming Justice: Tenant Experiences at Saskatchewan’s Housing Law Tribunal” (2019) 36 Windsor YB Access Justice 210 at 216. See also Paradis & Heffernan, *supra* note 39.

⁸⁴ See *e.g.* *Conexus Credit Union v Sanderson*, 2020 SKORT 2588; *Saskatoon Real Estate Services v St Martin*, 2020 SKORT 2164; *Regina Housing Authority v Treble*, 2020 SKORT 2638.

⁸⁵ See National Right to Housing Network, “Right to Housing Legislation in Canada,” online: <housingrights.ca/right-to-housing-legislation-in-canada/> [perma.cc/UMJ8-ALL3].

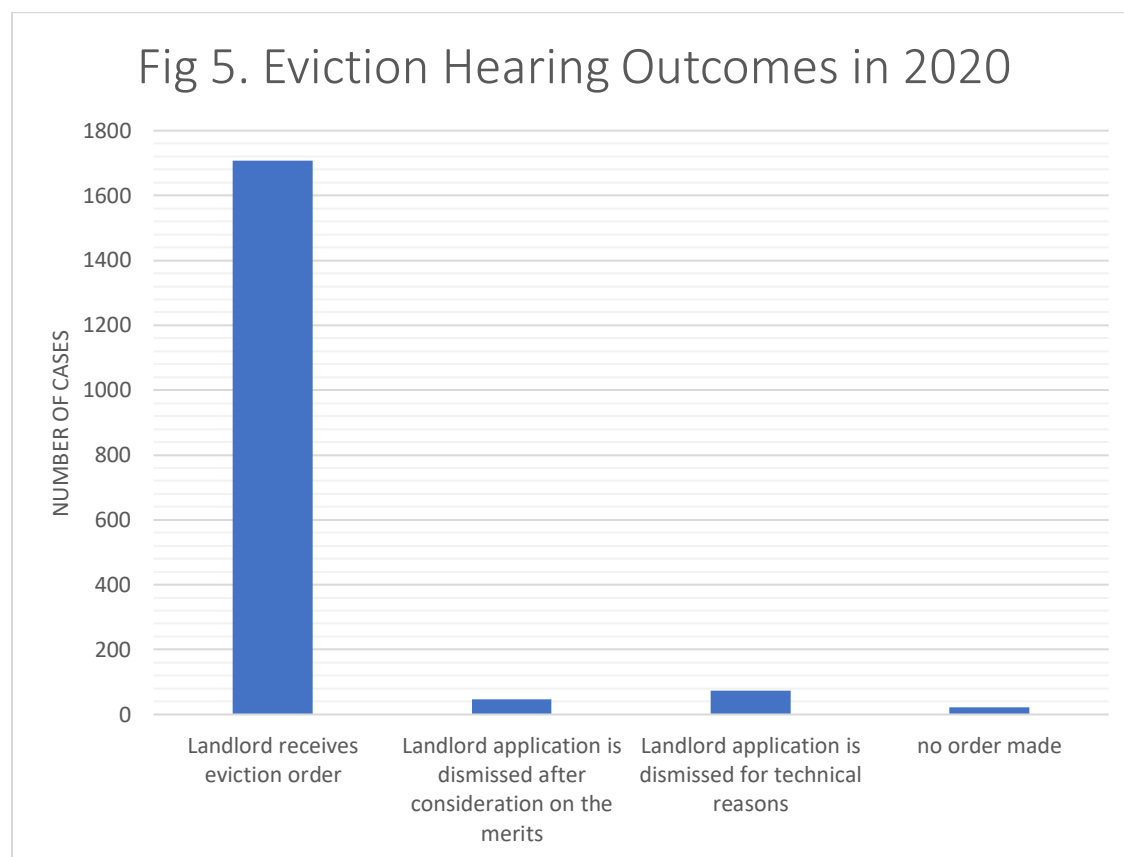
⁸⁶ Provincial Auditor of Saskatchewan, *supra* note 21 at 116.

⁸⁷ See Advocacy Centre for Tenants Ontario, “Tenant Duty Counsel,” online: <www.acto.ca/our-work/tenant-duty-counsel> [perma.cc/JJF7-3UTF].

have legal representation.⁸⁸ Access to free legal assistance for tenants therefore would be an important step forward.

C. IN 2020, LANDLORDS RECEIVED AN EVICTION ORDER OVER 90% OF THE TIME

One of the most significant findings in this study is the overwhelming success rates of landlord eviction applications at the ORT and the correspondingly very small number of eviction applications that were dismissed—both before and during the pandemic (see Figure 5). Overall in 2020, landlords received an eviction order about 92% of the time. A very small number (about 3%) of landlord applications were dismissed after consideration of the substantive merits of the case. A further 4% of landlord applications were dismissed for technical reasons, including problems with the forms, failure to properly serve the tenant, or jurisdictional issues. In 1% of cases, the Hearing Officer made no order—usually because the parties had come to an agreement, or the tenant had already vacated the unit.

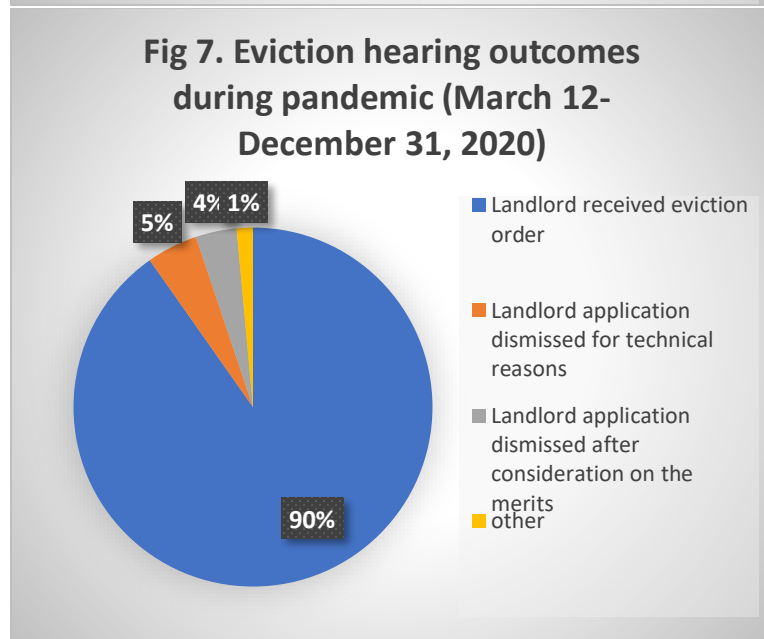
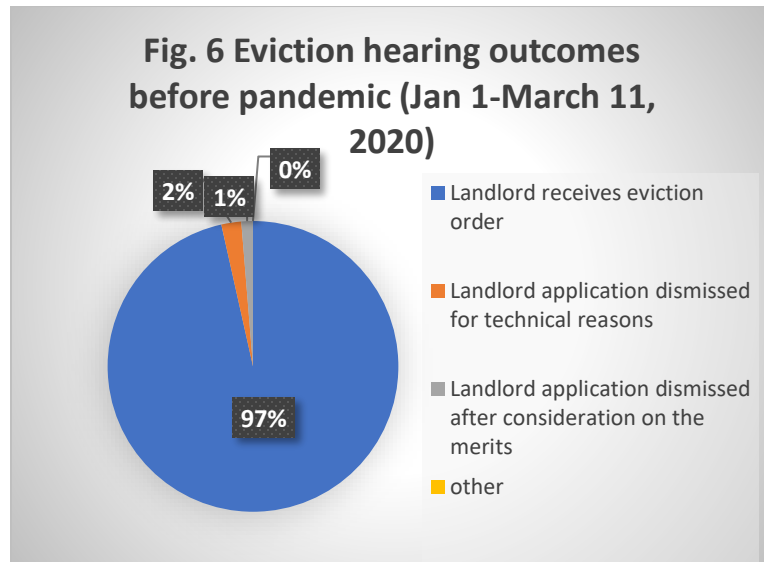


Did the pandemic impact outcomes? Between January 1st and March 11th—the day before the first COVID-19 case in Saskatchewan—the ORT granted landlords eviction orders in about 97% of cases, and only dismissed applications after consideration on the merits 1% of the time

⁸⁸ See The Justice in Government Project, “Key Studies and Data about how Legal Aid Improves Housing Outcomes” (25 February 2021), online (pdf) : <www.american.edu/spa/jpo/toolkit/upload/housing-7-30-19.pdf> [perma.cc/QB5U-FGN6].

(see Figure 6). Between March 12 and December 31 (including the entire period of the partial moratorium and for the remainder of 2020, when, as noted above, COVID-19 cases numbers surged to their peak for the year), landlords were successful about 90% of the time (Figure 7). Thus, landlord applications were somewhat less successful in obtaining eviction orders during the pandemic as compared to success rates during the approximately two and a half months before the pandemic started.

However, the fact remains that landlords were overwhelming successful in their eviction applications both before and during the pandemic, and it would be difficult to argue that the ORT substantively changed its approach to eviction decision-making in light of the pandemic. Further details about the decisions and these outcomes are discussed later in this article.



D. EVICTIONS DURING THE PARTIAL MORATORIUM

For the most part, this research defines the pandemic period as the time between 12 March and 31 December 2020. This is because even prior to the partial moratorium (which commenced on 26 March 2020), both the government and the ORT specifically represented that the ORT would take pandemic-related considerations into account in eviction decisions.⁸⁹ Furthermore, the pandemic-related health emergency was in the public consciousness in Saskatchewan shortly after March 12. However, the 131-day period of the partial moratorium was unprecedented in that the ORT was required by the government to cease processing all non-urgent eviction applications. As discussed above, the ORT issued a Directive on the first day of the partial moratorium emphasizing that it would only conduct hearings in “urgent situations where there is a potential risk to health or safety resulting from violence or damage to property.”⁹⁰

As shown in Figure 1, the partial moratorium led to a clear and dramatic reduction in the overall volume of eviction cases at the ORT. However, it is notable that applications for urgent/emergency evictions increased quite significantly as compared to similar applications both prior to and after the moratorium period. Eviction applications for emergency reasons were especially high in June and July—more than double the number of such applications seen in other months. As with all types of eviction applications in 2020, landlords were usually successful in these applications.

Interestingly, the majority of ORT eviction decisions released during the pandemic (including the period of the moratorium) did not mention the pandemic. That is to say, in most decisions, there is no indication anywhere in the body of the reasons that a pandemic was occurring, or that considerations or circumstances relating to the pandemic were relevant to the decision. This reality calls into question later claims by government officials that the ORT was prioritizing pandemic related considerations in its hearings.⁹¹ However, in a minority of cases, the written decision outlines tenant evidence relating to hardships caused by the pandemic; in an even smaller minority of cases (a small handful), the Hearing Officer dismisses the landlord’s application for eviction based on equitable considerations relating to the pandemic.⁹²

During the period of the partial moratorium, landlords sought and received eviction orders for a wide range of alleged tenant behaviours and actions, including:

- tenant violence towards landlord staff or neighbours⁹³
- alleged drug trafficking activities⁹⁴
- alleged gang involvement⁹⁵
- hoarding and causing serious damage to the rental unit⁹⁶

⁸⁹Office of Residential Tenancies, “Directive and Advisory Respecting Covid-19 as of March 20, 2020” (on file with author); James, *supra* note 5.

⁹⁰Office of Residential Tenancies, *supra* note 31.

⁹¹See *e.g.* the statement by the Minister of Justice that the pandemic is a “principal” factor taken into account by Hearing Officers: Arthur White-Crummey, “Sask. NDP calls for renewed moratorium on evictions,” *Regina Leader-Post* (15 April 2021), <leaderpost.com/news/saskatchewan/sask-ndp-calls-for-renewed-eviction-moratorium-amid-covid-wave> [perma.cc/WX67-SVH6].

⁹²See below for further discussion of the just and equitable analyses in ORT decisions.

⁹³See *Vu v Leigh*, 2020 SKORT 1048 and *Nipawin Housing Authority v Cote*, 2020 SKORT 1053.

⁹⁴See *Cress Housing v Cantre*, 2020 SKORT 1021.

⁹⁵See *Stevenson v Smith*, 2020 SKORT 1010.

⁹⁶See *Latkowcer v Newman*, 2020 SKORT 998.

- engaging in loud partying and making too much noise⁹⁷
- incidents of apparent or possible domestic violence (note it appears that the apparent victim was evicted in these cases)⁹⁸
- breaching public health guidelines by having large numbers of guests over⁹⁹
- having too much garbage in the yard, causing neighbours to complain, apparently because of impact on property values¹⁰⁰
- smoking in the unit¹⁰¹
- landlord had sold the unit and/ or arranged for a new tenant to move in¹⁰²
- cases that apparently primarily or partially revolved around rental arrears.¹⁰³

It is possible to argue that not all of the eviction orders made during the partial moratorium genuinely involved “urgent situations” that posed serious risk to health and safety, especially in light of the ongoing pandemic. This may be because the ORT maintained its established approach to section 68 eviction applications (section 68 is the section pertaining to urgent evictions). This is an approach where landlord evidence is usually accepted, and where perceived threat articulated by landlords is usually deemed to meet the requirements under section 68. Thus, Hearing Officers deciding cases during the moratorium mostly accepted landlord articulations of perceived risk, and mostly did not explicitly consider issues relating to the pandemic.

E. ARREARS AND EVICTION

As shown in Figure 1, eviction for arrears is by far the most common type of eviction proceeding in Saskatchewan. Evictions for tenant behaviours are the second most common, and all other grounds are negligible in terms of the total cases.¹⁰⁴ As noted above, the partial moratorium led to a dramatic reduction in overall eviction orders because landlords were not permitted to bring applications for eviction based on unpaid rent/arrears. It is notable that evictions for arrears did not dramatically rise following the lifting of the moratorium: Figure 1 shows that application patterns pre-pandemic are similar to patterns after the end of the moratorium. This might be surprising to some readers: after all, it was reported in June 2020 that Saskatchewan tenants were

⁹⁷ See *101185200 Saskatchewan Ltd. v Peterson*, 2020 SKORT 1161.

⁹⁸ Note that the decisions are not always clear about the details. However, it is certainly reasonable to ask questions about domestic violence when reading these decisions. See *Hall Rental Homes v Minty*, SKORT 2020 999; *Bold v Desjarlais*, 2020 SKORT 1026; *Roy v Billette*, 2020 SKORT 1050; *Western Premium Property Management v Baldhead*, 2020 SKORT 1138; *Densham v Sparvier*, 2020 SKORT 1073.

⁹⁹ See *Harding Holdings v Stone*, 2020 SKORT 1020.

¹⁰⁰ See *Aubichon v Kipling*, 2020 SKORT 1068.

¹⁰¹ See *Laroche McDonald Agencies v Totter*, 2020 SKORT 992.

¹⁰² See *Kajner v Marrai*, 2020 SKORT 1090.

¹⁰³ See *Sasknative Rentals v Melendez*, 2020 SKORT 1118; *Ahmed v Rhead*, 2020 SKORT 1162; *Shera v Davis*, 2020 SKORT 1114.

¹⁰⁴ It is notable that so-called “renovictions,” which are a concern in other urban centres in Canada, are not a significant type of eviction order in Saskatchewan. See Melissa Mancini & David Common, “‘Renoviction’ rates soar due to big city housing crunch,” *CBC News* (30 December 2019), online: <www.cbc.ca/news/canada/renovictions-housing-shortage-1.5400594> [perma.cc/FG3D-4YK8].

collectively \$30 million in arrears,¹⁰⁵ and we know that many tenants were among those most severely impacted by the pandemic's uneven economic fallout.¹⁰⁶

What explains the lower than anticipated ORT cases involving rent arrears post-moratorium? One possible explanation is that many tenants may have been subjected to informal eviction both during and after the moratorium period. That is to say, it is likely that some tenants moved out of their homes during or after the moratorium upon receiving a notice to vacate from their landlord. However, there are other possible explanations. Airgood-Obrycki et al's research has shown that tenants in the United States employed a wide range of strategies to pay their rent and preserve their housing despite huge pandemic-related economic pressures. Airgood-Obrycki showed that during the pandemic, tenants depleted savings, borrowed money from family and friends, used credit cards, and obtained pay day loans in order to pay their rent.¹⁰⁷ It is likely that some tenants in Saskatchewan used similar strategies. In addition, we know in Canada that many tenants were able to access federal government supports in order to pay rent during the pandemic.¹⁰⁸ As discussed above, we also know that some landlords worked with tenants to create payment plans, and other landlords reduced rent or simply did not pursue eviction for arrears. It is possible, then, that many tenants may have plunged deeper into financial precarity even though they have been able to patch together rent payments, and an evictions crisis may still be on the horizon. Thus, lower-than-anticipated ORT eviction rates for arrears immediately following the lifting of the moratorium in Saskatchewan might be misleading. Further research that tracks ongoing eviction rates is required to make sense of these dynamics.

This research revealed that in 2020, the majority of applications for eviction based on arrears were brought when the tenant is less than two months behind on rent. Indeed, about 40% of cases involved arrears in the amount of one month or less (see Figures 8 & 9). In other words, in about 40% of cases, landlords brought an eviction application at the first opportunity. The only time this pattern changed was immediately after the partial moratorium had been lifted (Figure 10). By October, the pattern had returned closer to the pre-pandemic status quo, meaning that most cases involved landlords who sought to evict tenants who were less than two months in arrears. The Court of Queen's Bench recently held that when landlords are moving to evict at the earliest possible moment, such cases "cry out" for a consideration of justice and equity.¹⁰⁹ As discussed below, most ORT decisions in 2020 did not include any meaningful analysis in this regard.

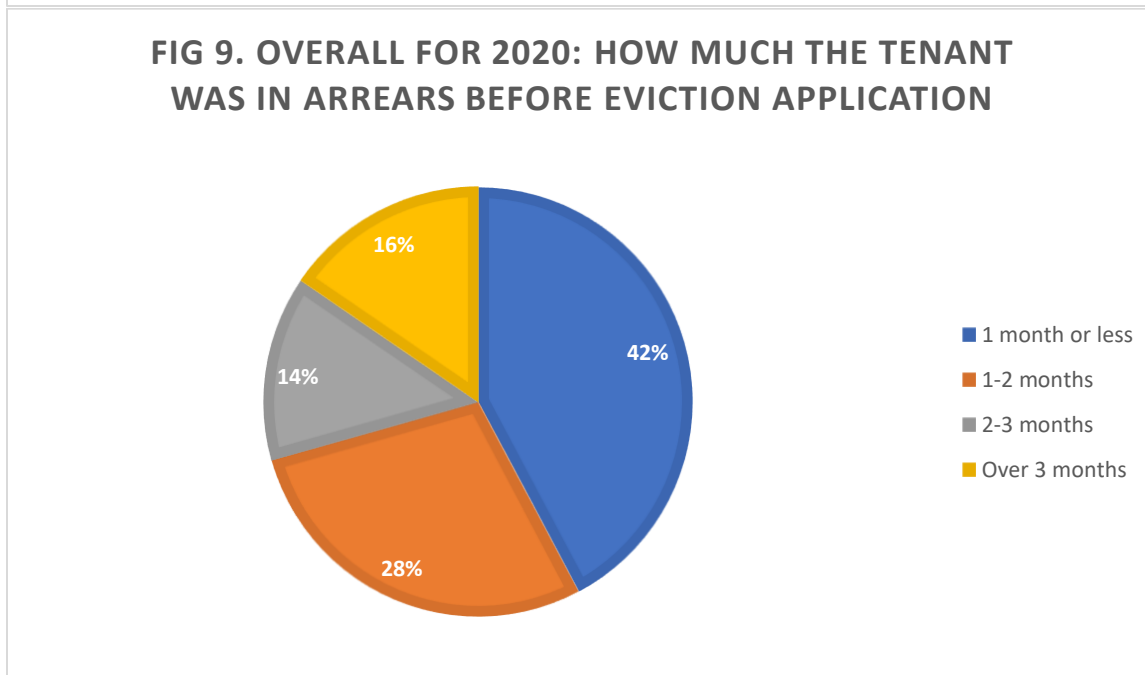
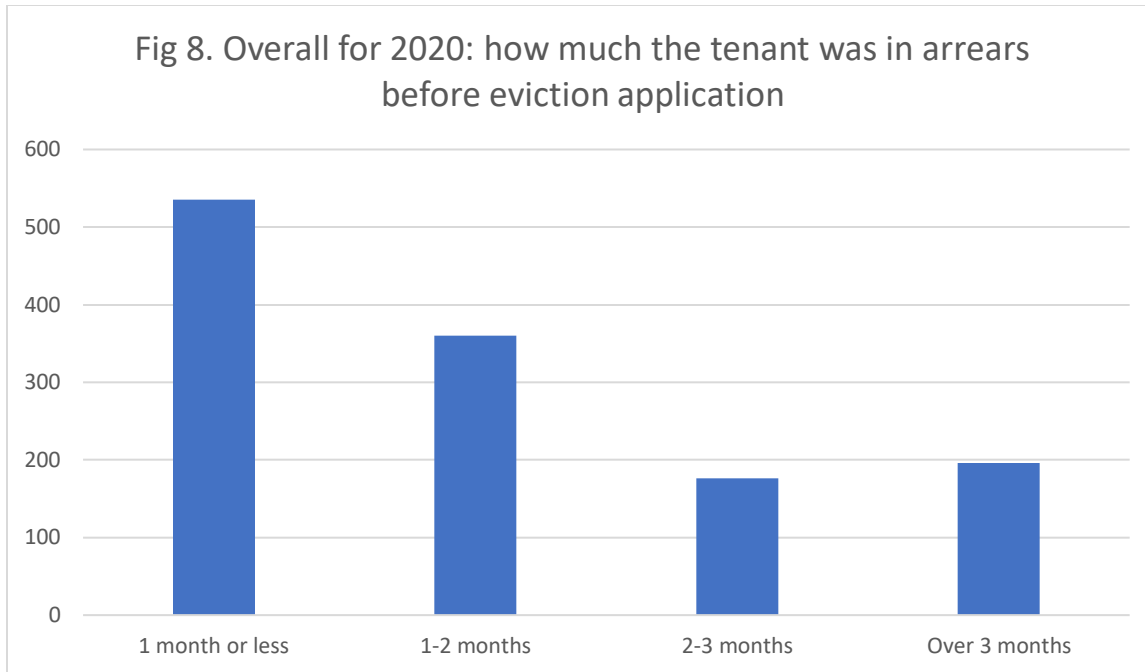
¹⁰⁵ See Arthur White-Crummey, "Saskatchewan's Eviction Moratorium to end in 'near future'," *Regina Leader-Post* (30 June 2020), online: <leaderpost.com/news/saskatchewan/saskatchewan-eviction-moratorium-to-end-in-the-near-future> [perma.cc/K9ZK-7GLX].

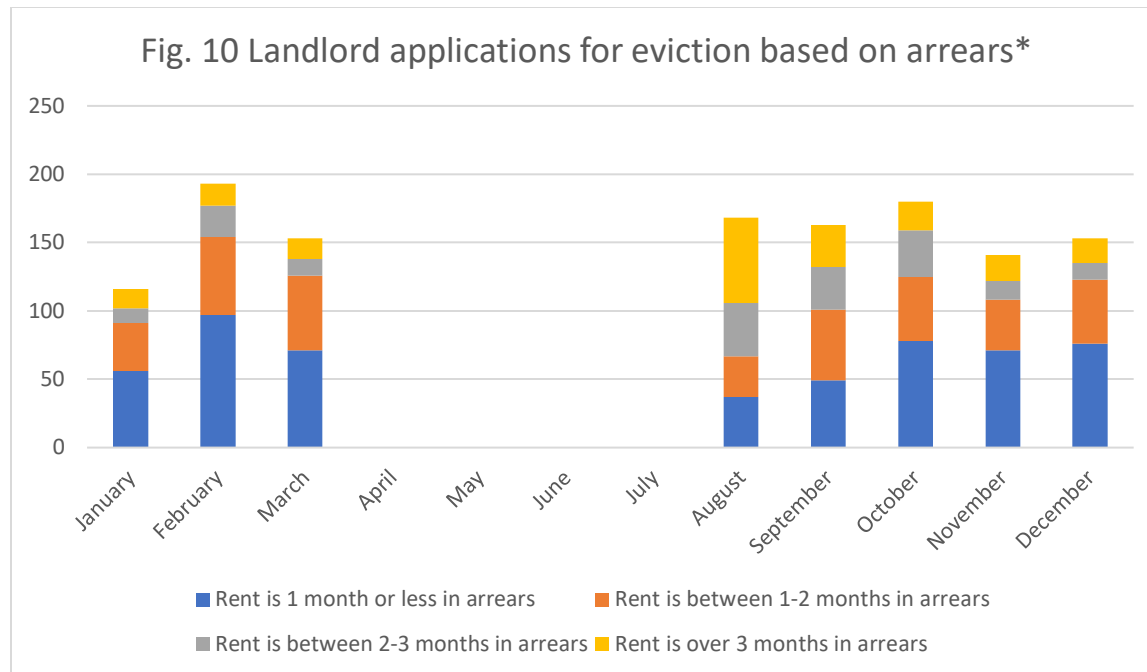
¹⁰⁶ Centre for Equality Rights in Accommodation and the National Right to Housing Network, "Addressing the Evictions and Arrears Crisis: Proposal for a Federal Government Residential Tenant Support Benefit," *CERA and NRHN* (21 February 2021) at 9, online (pdf): <housingrights.ca/wp-content/uploads/CERA-NRHN-2021-Addressing-the-Evictions-and-Arrears-Crisis.pdf> [perma.cc/P6UY-PM9Z].

¹⁰⁷ Whitney Airgood-Obrycki et al, "Renters' Responses to Financial Stress during the Pandemic," *Joint Centre for Housing Studies, Harvard University* (April 2021) at 2.

¹⁰⁸ See Bonnie Allen, "Landlords say poor tenants who received CERB can't make rent after losing social assistance," *CBC News* (22 November 2020), online: <www.cbc.ca/news/canada/saskatchewan/landlords-tenants-cerb-rent-1.5810230> [perma.cc/U4YR-YPTK].

¹⁰⁹ *Hanson v Saskatoon Real Estate Services*, 2021 QBG 287 at para 14.





F. THE ANATOMY OF EVICTION DECISIONS AND THE “JUST AND EQUITABLE” ANALYSIS

Because they are by far the most common type of ORT eviction decision, it is worthwhile to discuss the anatomy of ORT decisions that deal with unpaid rent/rent arrears. Most of the decisions are formulaic and highly patterned. Many include identical or very similar wording, giving a reader a sense that the Hearing Officer is simply inserting information (for example the amount of rent in arrears) into a pre-existing template. Significantly, most of these decisions provide no information about the evidence presented by the landlord to support their claims about unpaid rent. A typical decision includes only one sentence about evidence, simply noting that the Hearing Officer accepted the landlord’s evidence. It is possible to conclude based on this that landlords typically present little documentary evidence or other details other than their oral evidence about arrears. As a result, it is impossible to know (for most of these cases) whether the Hearing Officer considered whether the landlord was improperly claiming late fees in addition to rent arrears, or if the landlord was claiming arrears from one or multiple months, or if there mistakes in the landlord’s calculations. This is significant because establishing the existence of arrears is an important legal requirement, but also because in most cases, the decision includes an order for the tenant to repay the arrears owing. It is important that the amount be completely accurate.

However, a minority of decisions dealing with rent arrears describe the evidence provided by the landlord—usually copies of the lease, print outs of “rent ledgers,” and sometimes copies of bank statements or text messages between the landlord and tenant. Regardless of the types of evidence presented, the Hearing Officer almost always concludes that the landlord has proven their claim.

As discussed earlier, the Court of Queen’s Bench has held that Hearing Officers must conduct an analysis of whether an eviction is just and equitable. However, most 2020 decisions include no such analysis. Many do include a simple statement that the order is just and equitable,

but a reader is left with no understanding about how or why the Hearing Officer came to that conclusion. Sometimes, there is clearly evidence before the Hearing Officer that is relevant to such an analysis. For example, in several cases, rent was unpaid due to mistakes and bureaucratic delays by the Ministry of Social Services. Hearing Officers ordered evictions in these cases. In one case, for example, the decision states that “the tenant’s reason for non-payment of rent, being a mistake made by the Ministry of Social Services, does not establish a basis . . . to grant them relief from the landlord’s application for possession.”¹¹⁰ In a few cases, Hearing Officers claimed to have no discretion to consider issues raised by tenants about their circumstances. For example, in one case, the tenant had recently not been paid and so could not pay his rent. The Hearing Officer wrote: “Unfortunately, where a person relies on income and money from third parties to pay the rent and those parties fail to pay them on time, *this is not an excuse or a justification in law to deny issuing the writ of Possession to the Landlord*. Accordingly, on the evidence before me, *I must grant the Landlord the requested order*.”¹¹¹ This statement appears to be mistaken: as noted earlier, the Hearing Officer has discretion and is not required by law to make an eviction order.

In a few cases, tenants attempted to bring forward evidence relating to possible landlord violations of the Act. Some tenants testified that there were problems with the condition of their homes; others referred to activities such as improper entry into the unit by the landlord or the imposition of possibly illegal fees and charges. It is open to Hearing Officers to consider allegations by tenants about landlord breaches of the Act as part of the required “just and equitable analysis” (discussed above). However, for the most part Hearing Officers proceeded in these cases by ordering the eviction and telling the tenant that they should bring their claim in a separate application. We know that many tenants are reluctant to raise issues about the habitability of their homes for fear of retaliation by landlords.¹¹² Hearing Officers should more often consider tenant claims about landlord breaches of the Act as part of the required “just and equitable” analysis.

G. TYPES OF EVICTION ORDERS

While landlords received their eviction orders over 90% of the time in 2020, these orders were not always identical in nature. The decisions reveal three distinct “types” of eviction orders (although as will be discussed, in practice the orders may be less distinguishable). Most common (see Figure 11) is the “immediate order for possession”/immediate eviction order, which characterizes a significant majority of eviction orders. An immediate order is exactly what it sounds like: it requires the tenant to vacate their home immediately and can be enforced by the sheriff right away. It is important to note that in some of the immediate order cases, the decision records that the tenant consented to the order or was already in the process of moving out. However, it is clear from the larger context of this study that the order would typically ensue regardless of tenant consent. It is also clear in the larger context of landlord-tenant power relations (discussed above) that tenant consent is not provided in anything that resembles an equal playing field. It is for this reason that eviction scholars Zell and McCullough include situations where tenants “voluntarily” leave their homes after a landlord initiates eviction proceedings as part of their definition of

¹¹⁰ *Janzen v Fleing*, 2020 SKORT 102.

¹¹¹ *ICR Commercial Real Estate v Whiteman*, 2020 SKORT 144, emphasis added.

¹¹² Saskatchewan Human Rights Commission, *Access and Equality for Renters in Receipt of Public Assistance: A Report to Stakeholders*, (Saskatchewan Human Rights Commission: 2018) at 14, online (pdf): <saskatchewanhumanrights.ca/wp-content/uploads/2020/03/SHRC_RIRPA_web.pdf> [perma.cc/QP6T-YQHF].

informal eviction.¹¹³ Furthermore, it was not possible to ascertain whether tenants consented to the order in many of the cases. Because of this context, and because the landlord received the order they were seeking, this study does not distinguish orders based on tenant consent.

The second type of order is what this research calls the “delayed” eviction order. In a delayed order, the order becomes enforceable by the sheriff at a specified later date. These delayed eviction orders appear in about 15% of the cases overall and were more common during the pandemic. Delayed eviction orders are typically ordered in cases where the tenant requests more time to move out due to personal circumstances, and where the Hearing Officer decides that it would be just and equitable to give the tenant more time to move out. However, it is important to note that in most cases involving a delayed order, the decision makes it clear that the landlord agreed to the delayed move-out date. In contrast, if a landlord disagrees and asks for an immediate eviction order, the Hearing Officer typically goes along with the landlord’s request and orders an immediate eviction order. Thus, it appears that in practice, landlord consent is an important component of most delayed eviction orders, and Hearing Officers are reluctant to order them if landlords demand an immediate order.

The final type of order, which appeared infrequently but more often during the pandemic, is what this research identifies as the “honour system eviction order.” This is an immediate or delayed eviction (usually immediate) order, which is accompanied by an explanation in the written decision that the landlord has agreed it will not enforce the order if the tenant complies with certain conditions by a specified date. Usually, the condition is that the tenant pay any outstanding rent arrears. In a few cases the conditions were that the tenant change certain behaviours (*i.e.*, stopping smoking in their unit, or controlling disruptive behaviours of guests). The decisions do not use the term “honour system eviction,” but it seemed important to identify them as a distinct type of eviction order, and this required a label. The term “honour system” eviction order was chosen to highlight that these orders embody a specific orientation towards landlords by the ORT: they are granted on a premise that landlords operate honourably and will not move to enforce the orders if the tenant fulfills the stipulated conditions. In other words, these orders are technically immediately enforceable by the Sheriff, but the Hearing Officer grants them to landlords on the basis of a landlord’s promise not to enforce them—a tacit “honour system.” The assumption that landlords will uphold their undertakings is usually implicit, but in some cases, it is stated explicitly. For example, in one case, the Hearing Officer writes: “landlords are generally dutiful with respect to these undertakings and I trust this will result in a continuation of the tenancy and a satisfactory resolution to this matter.”¹¹⁴ In another case, the Hearing Officer wrote: “It is hoped that the Landlord will not rely on this writ should the Tenant satisfy the rental arrears.”¹¹⁵

It is possible to interpret these honour system eviction orders as benevolent alternatives to immediate eviction orders or as examples of equitable orders made to help preserve tenancies. They are similar in some ways to the eviction orders made by Ontario’s Landlord Tenant Board in cases of non-payment of rent. The Ontario orders give tenants a specified period of time to pay arrears, after which they are enforceable. Ontario tenants can legally void the orders by paying the amount owing.¹¹⁶ In contrast, the honour system orders are technically enforceable immediately and are reliant solely on the landlord being “dutiful” and honourable in upholding them.

¹¹³ Zell & McCullough, *supra* note 36 at iii–iv.

¹¹⁴ *Boardwalk REIT Properties Holdings v Chase*, 2020 SKORT 1536.

¹¹⁵ *102054929 Sask Ltd. v Wenzel*, 2020 SKORT 1997.

¹¹⁶ See overview of Ontario process in Advocacy Centre for Tenants Ontario, “Tip Sheet for Tenants: I got an eviction order because I owe rent. If I pay can I stop the sheriff from coming?” (January 2018), online (pdf):

Although honour system evictions are made explicitly with the intention of *not* displacing tenants, it is important to emphasize that landlords who receive “regular” immediate eviction or delayed eviction orders can always choose whether to enforce the orders. Thus, all of these types of orders can function as tools to enforce rent, arrears, and late fee payments, or to compel behavioural changes by tenants, rather than as tools for displacement. This observation aligns with research about evictions in the American context. For example, Leung et al found that eviction can be a “routine, drawn-out process” which landlords often use not to displace tenants but rather to extract rent, discipline tenants, and exacerbate financial precarity.¹¹⁷ Similarly Lauren Sudeall and Daniel Pasciuti write that the eviction court process “revolves largely around the *threat* of eviction and the way in which that threat can be leveraged to get what is ultimately desired – most likely money and not possession.”¹¹⁸ Thus, landlords use state-funded legal processes as “rent collection mechanisms,” leveraging the power of the state to assist with prioritizing their claims among debts owed by financially vulnerable tenants.¹¹⁹ This phenomenon leads to policy questions about whether it is appropriate for a tribunal such as the ORT to function as a tool for private debt collection. Further research about how landlords actually deploy threats of eviction, and actual eviction orders, is needed in order to better understand these dynamics in the Saskatchewan context.

Both delayed eviction orders and honour system eviction orders are often granted in cases where the facts could have justified a dismissal of the landlord’s application pursuant to the required “just and equitable” analysis (discussed above). And both types of orders were made more often during the pandemic, suggesting that they functioned as a way for Hearing Officers to address equitable issues relating to the tenant’s circumstances (see Figures 12 and 13). Some examples are instructive. In one case, the tenant’s rent money had been stolen, and the tenant asked for more time to make her rental payment. The Hearing Officer granted the landlord an immediate eviction order “in case” the tenant did not pay as she had promised.¹²⁰ In another case, the tenant was unwell and owed less than half a month of rent: the Hearing Officer granted an immediate eviction order, stating: “perhaps the matter can be settled. The Landlord seeks the order in case no agreement can be reached. If one can, he will not enforce the writ.”¹²¹ In a third example, the tenant provided evidence that she was behind on rent after her partner assaulted her and was no longer living with her. The landlord accepted her payment proposal but asked for, and obtained, an immediate eviction order in case a payment was missed.¹²² These above examples are all examples of “honour system” evictions. In an example where the ORT granted a delayed eviction order, a landlord sought to evict a single mother in the middle of winter because her guests were disturbing other residents in the building. The tenant’s child was just getting settled into a new school. In this case, the Hearing Officer decided that the tenant would have two months to vacate the unit.¹²³

Finally, it should be noted that Hearing Officers typically only order delayed or “honour system” eviction orders if the landlord consents. Thus, *in practice*, these orders are typically made where there are both compelling tenant circumstances *and* landlord consent. Where a landlord

<www.acto.ca/production/wp-content/uploads/2018/02/9-Tip-Sheet-If-I-pay-Can-I-stop-the-Sherrif-from-coming_ENG_Jan2018.pdf> [perma.cc/GB68-VJES].

¹¹⁷ Leung et al, *supra* note 47 at 2.

¹¹⁸ Sudeall & Pasciuti, *supra* note 18 at 55.

¹¹⁹ *Ibid.*

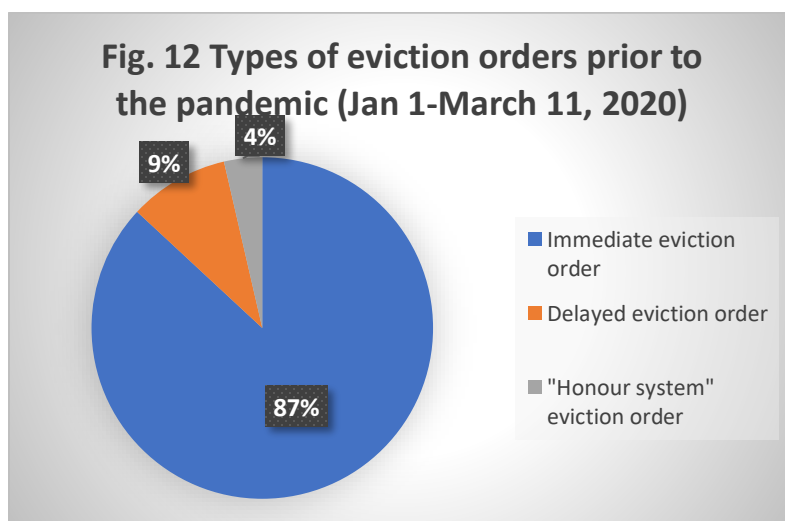
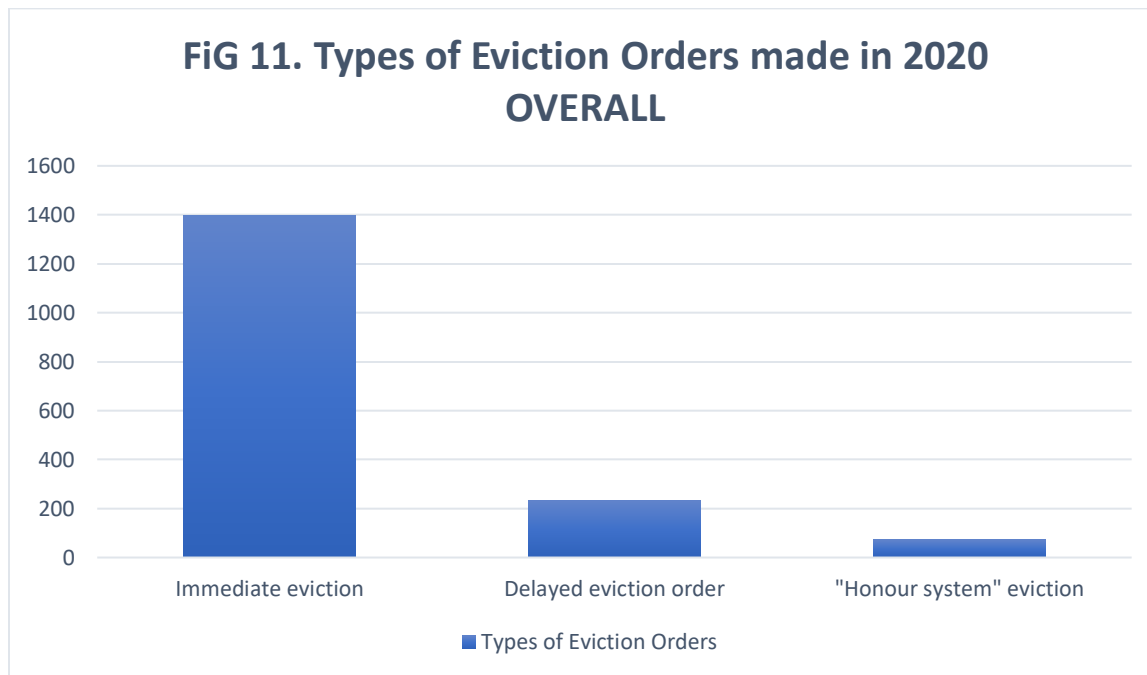
¹²⁰ *Elite Property Management v Obey*, 2020 SKORT 269.

¹²¹ *Progressive Property Management v Kinar*, 2020 SKORT 342.

¹²² *Shawn’s Property Management v Nichol*, 2020 SKORT 291.

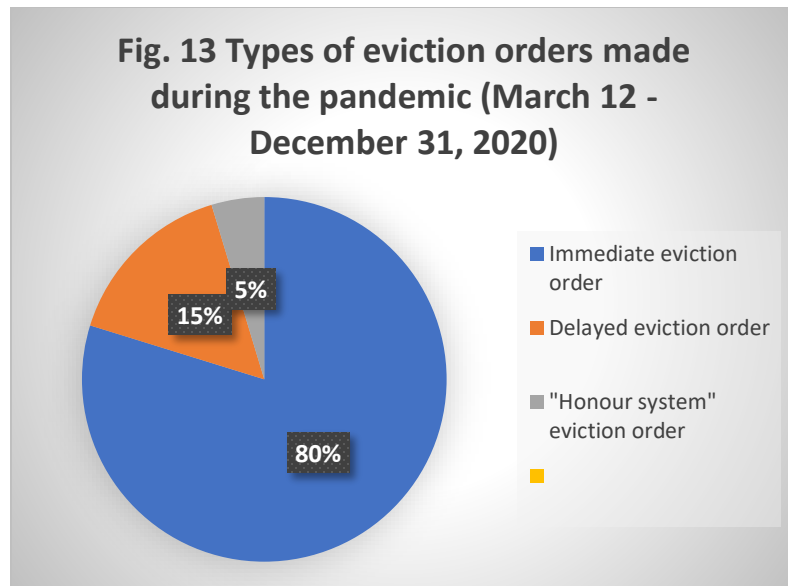
¹²³ *Colliers International v Zazula*, 2020 SKORT 572.

continues to demand an immediate order, the Hearing Officer will typically make an order in line with the landlord’s request. Consider the case where a tenant who was a single mother of three children and who had recently escaped a bad relationship and was trying to start over. The tenant paid all outstanding arrears prior to the hearing. At the hearing, she begged the landlord to “have a heart and let her stay.” The landlord disagreed and the Hearing Officer subsequently issued an immediate eviction order, in line with the Landlord’s request.¹²⁴ It is rare for Hearing Officers to make orders that deviate from what landlords request or are prepared to accept during the hearing.

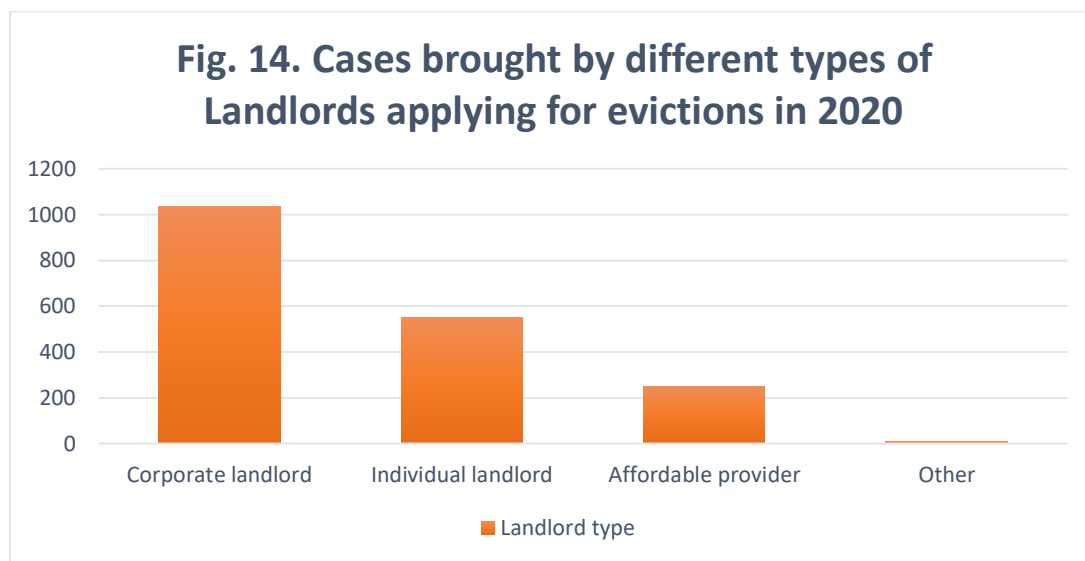


¹²⁴ *Centurion Apartment Properties v Gartner*, 2020 SKORT 662.

¹²⁵ Note that not all decisions make it clear what type of order is being made.



H. CORPORATE LANDLORDS EVICT MOST OFTEN



Finally, this research sought to determine the types of landlords that pursued eviction orders in 2020. The research categorized landlords into three main groups: corporate landlords, individual landlords, and affordable providers (defined as comprising non-profit, public housing providers, and Indigenous housing providers).¹²⁶ As shown in Figure 14, corporate landlords applied for eviction orders most often, followed by individual landlords, and then affordable housing

¹²⁶ Classification was based on the name of the landlord. In most cases it was clear what category the landlord fell into. In some cases, an internet search was required in order to determine the appropriate category. For more nuanced discussion of types of housing providers in Canada, see Catherine Levitan-Reid, Alicia Lake & Robert Campbell, “Exploring Organizational Form in the Affordable Rental Housing Sector” (2015) 27 Intl J Voluntary & Non-Profit Orgs.

providers. A very small number of landlords were categorized as “other” (including municipalities or condominium corporations).

The media and landlord advocacy groups often portray landlords as “mom and pop” landlords—individuals who are renting a basement suite or revenue property as a means of paying their own mortgages or earning small amounts of income.¹²⁷ However, fewer than a third of landlords who sought eviction in Saskatchewan in 2020 were individual landlords. Furthermore, some of these individual landlords owned multiple revenue properties and their names appeared more than once (and for some, many times) in the eviction decisions. Such landlords are more analogous to corporate landlords running a business for profit. Some, for example, used property management companies to assist them with their eviction cases.

As noted, the largest group of landlords featured in the eviction decisions are corporate entities. These corporations included numbered companies from British Columbia, Alberta, Ontario, and Saskatchewan, large national “Real Estate Investment Trusts,” Saskatchewan and national property companies and more. These corporate landlords are part of a larger trend in Canada and worldwide of the “financialization of housing,” where housing is increasingly treated as a market commodity, a profit-generating investment, and even security for global financial instruments.¹²⁸ While some individual landlords struggled financially during the eviction moratorium,¹²⁹ federal financial relief was available to some landlords during the pandemic,¹³⁰ and there is some evidence that large corporate landlords experienced a lucrative year in 2020.¹³¹ An article in the *Western Investor* magazine, for example, reported in October 2020 that “residential rental properties remain a resilient performer in an asymmetric recession.”¹³² Speaking about the impacts of the pandemic from an American perspective, a spokesperson for the Meridian Capital group stated: “nobody wants to capitalize on anybody’s misfortune. But I will tell you, real-estate investors – when you take the emotion out of it – many of them have been waiting for this for a decade.”¹³³

¹²⁷ See e.g. CKOM News, “Frustration mounts for landlords due to eviction ban,” *CKOM News* (24 June 2020), online: <www.ckom.com/2020/06/24/716802/> [perma.cc/2A5L-DHS5].

¹²⁸ See United Nations Human Rights Office of the High Commissioner, “Financialization of Housing,” *United Nations*, online: <www.ohchr.org/EN/Issues/Housing/Pages/FinancializationHousing.aspx> [perma.cc/3JZ4-LCU6].

¹²⁹ See Phil Tank, “Saskatchewan to remove ban on non-urgent eviction on Aug 4,” *Saskatoon StarPhoenix* (6 July 2020), online: <thestarphoenix.com/news/local-news/saskatchewan-to-remove-ban-on-non-urgent-evictions-on-aug-4> [perma.cc/5KYV-P95W]; Francois Biber, “‘They get to live for free’: Sask. Landlords want changes to province’s freeze on evictions during Covid-19,” *CTV News Saskatoon* (May 2020), online: <saskatoon.ctvnews.ca/they-get-to-live-for-free-sask-landlords-want-changes-to-province-s-freeze-on-evictions-during-covid-19-1.4947365> [perma.cc/5682-SXQH].

¹³⁰ See Canadian Mortgage and Housing Corporation, “Covid-19: eviction bans and suspensions to support renters” (25 March 2020), online: <www.cmhc-schl.gc.ca/en/rental-housing/covid-19-eviction-bans-and-suspensions-to-support-renters> [perma.cc/J3LR-YQA4].

¹³¹ Ricardo Tranjan, “Crisis? What Crisis? One of Canada’s largest landlords is having a profitable 2020,” *Canada’s National Observer* (20 November 2020), online: <www.nationalobserver.com/2020/11/20/opinion/canada-2020-housing-rent-covid-pandemic-landlord-profits> [perma.cc/E3KL-WCY7].

¹³² Frank O-Brien, “Staggered by virus, multi-family sector stays agile,” *Western Investor* (October 2020) at A10; See also Ben Colomonus, “Resilient Multifamily sector holding strong during pandemic,” *Forbes* (14 December 2020), online: <www.forbes.com/sites/forbesrealestatecouncil/2020/12/14/resilient-multifamily-sector-holding-strong-during-pandemic/?sh=3d0cb0af70df> [perma.cc/S8V7-7AC8].

¹³³ Quoted in Leilani Farha & Kaitlin Schwan, “The Front Line Defence: Housing and Human Rights in the Time of COVID-19” in Colleen M Flood et al, eds, *Vulnerable: The Law, Policy and Ethics of COVID-19* (University of Ottawa Press, 2020) 355 at 364.

As shown in Figures 15 and 16, it appears that eviction rates by corporate landlords increased very slightly during the pandemic compared to rates before the pandemic, evictions by individual landlords decreased very slightly, and evictions by affordable providers increased very slightly. However, overall, the data is clear that corporate landlords applied for the most eviction orders, followed by individual and then affordable housing providers. Without knowing the overall composition of the rental market in Saskatchewan (*i.e.*, how many tenants rent from each type of landlord), it is difficult to make any significant conclusions about evictions by type of landlord. Leung and her co-authors have noted that when landlords have a personal relationship with their tenants (typical for many individual landlords) they may be more likely to solve issues without resorting to the legal system. Canadian research has suggested that non-profit landlords are more reluctant to evict tenants as compared to other types of landlords.¹³⁴ In contrast, corporate landlords and their property managers are more likely to feel “at the mercy of their spreadsheets” and adherence to corporate policies on rent collection and eviction can “leave little room to negotiate with tenants.”¹³⁵ Elijah de la Campa’s pandemic-era research also showed that in the American context, smaller landlords were more likely to reduce rent and make other accommodations for tenants during the pandemic as compared to large corporate landlords.¹³⁶ Further research is clearly needed to understand the makeup of Saskatchewan landlords, as well as the dynamics of landlord practices in Saskatchewan relating to eviction during the pandemic and beyond.¹³⁷

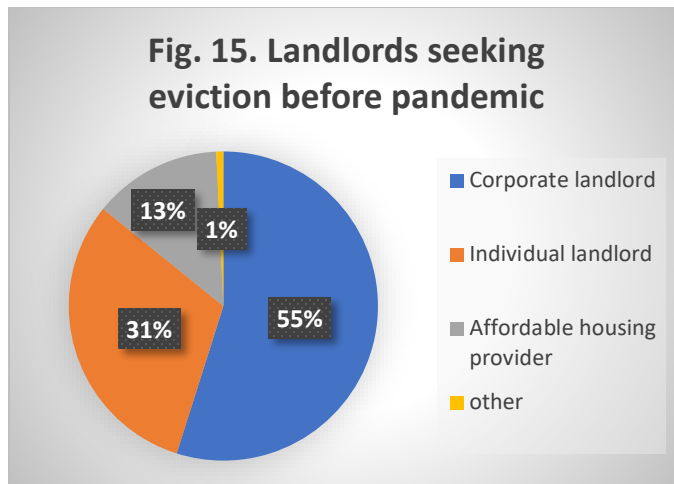
¹³⁴ Lapointe, *supra* note 18 at 12.

¹³⁵ *Ibid* at 18.

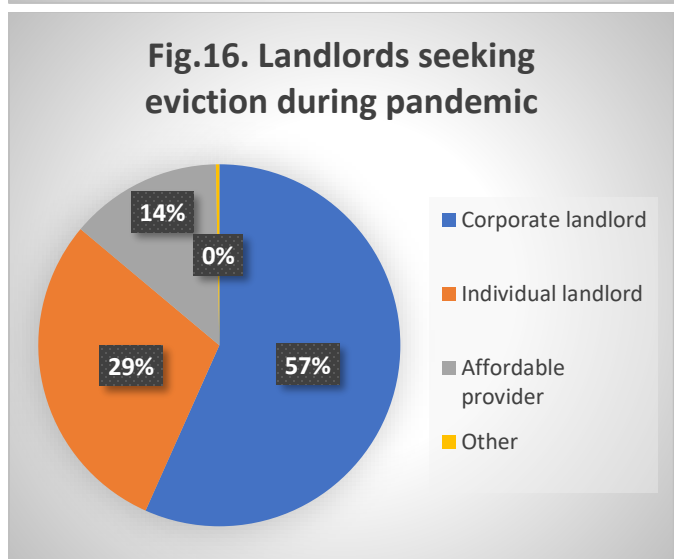
¹³⁶ Elijah de la Campa, “The Impact of Covid-19 on Small Landlords in Albany and Rochester, New York” (paper presented at the Joint Centre for Housing Studies of Harvard University on 11 March 2020), [unpublished].

¹³⁷ According to census data, there were 109,685 tenant households in Saskatchewan in 2016. See Statistics Canada, *Census Profile 2016*, online:

<www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/Page.cfm?Lang=E&Geo1=PR&Code1=47&Geo2=&Code2=&SearchText=Saskatchewan&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=47&type=0> [perma.cc/MGT5-VKQY]; in 2020, the Saskatchewan Housing Corporation reported that there were at least 24,600 affordable and non-profit housing units in the province in 2020. See Saskatchewan Housing Corporation, *Annual Report for 2020* (2020), online (pdf): <pubsaskdev.blob.core.windows.net/pubsask-prod/126662/2020-SHC-Annual-Report.pdf> [perma.cc/6JLN-4QCF] Thus, it appears that approximately 22% of Saskatchewan tenants live in affordable and non-profit housing, although the above estimate is limited by its reliance on 2016 census data. The remainder live in “market” rental housing, including housing rented by corporate and individual landlords.



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VI. CONCLUSION

In a pandemic year where people were asked to “stay home” and “stay safe,” hundreds of tenants faced eviction after hearings at the ORT. This study has shown that a majority of tenants did not attend their eviction hearing both before and during the pandemic, and therefore a majority of eviction orders were made without the benefit of tenant evidence. This raises concerns about access to justice and the need to consider how tenants’ voices can be heard more often at eviction hearings. Even though the ORT is designed to operate without lawyers, it seems that free legal assistance, perhaps through a duty counsel program, might help to alleviate the current imbalance.

However, even where tenants did appear, outcomes were almost always in the landlords’ favour. This research suggests that this statistic is due to a combination of factors in addition to the absence of tenants, including the absence in a majority of decisions of a proper analysis about whether the decision is in the interests of justice and equity, the absence in many decisions of a

¹³⁸ 1 January – 11 March 2020. As discussed above in section V(D), this research defined the pre-pandemic period as being 1 January – 11 March, and the pandemic period as being 12 March – 31 December 2020.

¹³⁹ 12 March – 31 December 2020.

description or analysis of the evidence, and the propensity of many Hearing Officers to make delayed or “honour system” eviction orders instead of dismissing landlord claims where just and equitable considerations exist. Hearing Officers would benefit from education on equitable jurisdiction and also more generally on the larger context of landlord-tenant relationships and housing realities in Saskatchewan. They would also benefit from training on the human right to housing and the vast literature on the highly negative impacts of eviction on tenants.¹⁴⁰ Given the fact that several cases appeared to involve domestic violence, and the ORT evicted the apparent victim, specific training about the dynamics of domestic violence would also be helpful. Ideally, the ORT would engage a diverse group of Hearing Officers, including Hearing Officers who have lived experience of marginalization and housing precarity. This would help to counteract the risk, observed by Sabbeth and discussed earlier, that Hearing Officers may tend to identify more closely with landlords than with tenants. Legislative and policy reforms, such as the inclusion of a diversion program that would respond more holistically to vulnerable tenants,¹⁴¹ or the inclusion of a “right to cure”¹⁴² in the Act, could also potentially reduce evictions.

The most significant intervention during the pandemic was the moratorium on non-urgent evictions. Indeed, eviction moratoria have been described as the “stand-out rental policy innovation of the COVID-19 pandemic.”¹⁴³ Certainly Saskatchewan’s partial moratorium on evictions had a significant impact in terms of reducing the total volume of evictions. However, this was due to the ban on most types of eviction applications rather than on significant change in the decision-making practices of Hearing Officers: almost every “urgent” eviction application that was heard during the moratorium was granted, regardless of the actual severity of the issues involved.

Overall, then, the pandemic did not appear to significantly impact the ORT’s approach to eviction decision-making in individual cases. Although landlords were somewhat less likely to get immediate eviction orders after the pandemic started, they continued to be successful in receiving eviction orders about 90% of the time (as opposed to 97% prior to the pandemic). It is important to emphasize that this research found that both during the partial moratorium and after it was lifted (and the pandemic worsened in the province), eviction decisions rarely mentioned the pandemic, and mostly did not include pandemic-related considerations in the written analysis. Interestingly, once the partial moratorium was lifted, ORT hearings for evictions based on arrears did not significantly increase when compared to pre-pandemic patterns. More research is needed to understand the reasons for this, including whether there was a surge of informal evictions when the partial moratorium was lifted.

This research leads to more questions than answers. There is a significant need for more research on evictions in Saskatchewan, but also across the country. For example, how do the ORT’s outcomes compare to the outcomes of other tribunals across the country? How do specific legal regimes and local housing tribunal processes and cultures impact landlord applications to evict tenants and the outcomes of hearings? How are eviction orders actually used by landlords (*i.e.*, to what extent are they used as tools to extract rent and related fees or actually to displace tenants)? What strategies do landlords use to either prevent eviction or enforce evictions? How do sheriffs take up their role when it comes to enforcement? How many tenants are evicted outside of

¹⁴⁰ Some of this literature is discussed earlier in this article. See section III, above.

¹⁴¹ Paradis & Heffernan, *supra* note 39.

¹⁴² See discussion in Shannon Price, “Stay at Home: Rethinking Rental Housing Law in an Era of Pandemic” (2020) 28 *Geo J on Poverty L & Pol’y* 1 at 27–28.

¹⁴³ Pawson et al, *supra* note 17 at 87.

the formal ORT process? Finally, and most urgently, how can we create a society where tenants can afford to pay their rent, and live securely and safely in their homes without fear of eviction?