

The Pandemic, Evictions, and Access to Justice for Tenants in Saskatchewan



Saskatchewan pandemic eviction stories

- On December 20, 2020 (height of third wave of pandemic) a landlord sought to evict a young, single mother of four due to unpaid rent. At the eviction hearing, the mother talked about her financial difficulties and proposed a payment plan. The landlord (a corporation) obtained an immediate eviction order.
- On December 7, 2020, a landlord sought to evict a tenant, who had been hospitalized with Covid and who was half a month behind in rent. The landlord (a corporation) obtained an immediate eviction order.
- In October, 2020, a landlord sought, and received, an eviction order based on evidence that the floor of the tenant's unit was "sticky" and there was garbage and "dried macaroni and cheese" on counters and floors.

These are 3 examples of 1850 eviction decisions released by the Office of Residential Tenancies (SK's housing law tribunal) in 2020

Saskatoon mom evicted 11 days after childbirth struggles to seek out housing

By **early news24** - April 9, 2021

Like 0



This presentation

- Share results of my research where I analyzed all 1850 eviction decisions made in 2020 by Saskatchewan's housing law tribunal (the Office of Residential Tenancies)
- Why is this research important?
 - Housing is a human right, and a fundamental need. Research has shown that eviction from housing is linked to multiple adverse outcomes.
 - Eviction during the Covid-19 pandemic was associated with higher risk of adverse outcomes and death.
 - The “housing justice system” is almost never subjected to empirical study or analysis



The Covid-19 Pandemic

- WHO declared a global pandemic March 11, 2020 – first SK case detected the next day
- Saskatchewan declared state of emergency on March 18, 2020

COVID-19 in Sask: Province declares state of emergency after number of cases doubles



of the new cases does not have demonstrated link to recent travel

[by Quenneville, Joelle Seal](#) · CBC News · Posted: Mar 18, 2020 9:43 AM CT | Last Updated: March 19, 2020



“Stay home, stay safe, save lives”

- In SK and around the world, people were exhorted to stay home.
- Housing advocates around the world began to call on governments to protect tenants from eviction
- *“Having more people evicted into homelessness is a terrible response during this pandemic”* – Bahar Shadbour, Advocacy Centre for Tenants Ontario



The Impacts of eviction and Covid-19

- Stable and secure housing is a fundamental social determinant of health
- Eviction can trigger multiple and compounding negative impacts: trauma, homelessness, fragmentation of families, loss of work/ educational opportunities, adverse mental and physical health consequences
- Eviction affects the most vulnerable members of society.
- Eviction during the pandemic associated with higher risks of contracting the virus. *“Housing has become the front-line defence against the coronavirus. Home has rarely been more of a life or death situation”* – UN Special Rapporteur on the Right to Adequate Housing



Saskatchewan's partial eviction moratorium

- Governments around Canada & the world imposed different types of moratoria on evictions
- SK government imposed a partial moratorium on evictions on March 26, 2020
 - Halted all evictions except those involving urgent risks to health or safety
- The partial moratorium was in place for 131 days. Lifted on Aug 4, 2020.
 - *“With the success of flattening the curve in Saskatchewan, we believe it’s appropriate to lift the moratorium on non-urgent evictions”* – Justice Minister Don Morgan
- The worst days of the pandemic were still ahead. Government officials emphasized hearing officers would consider pandemic related hardships in decisions even after moratorium was lifted



Saskatchewan / Local News



Calls mount for Sask. government to halt evictions during COVID-19 pandemic

Advocates, lawyers and renters' groups want a moratorium on evictions due to nonpayment of rent during the COVID-19

P
T

Eviction Suspensions To Be Lifted

Released on July 6, 2020

Starting August 4, 2020, the Office of Residential Tenancies (ORT) will begin accepting eviction applications from landlords for non-payment of rent.

“When the pandemic began, we wanted to ensure tenants facing hardship as a result of COVID-19 were able to take the necessary social-distancing measures,” Justice Minister and Attorney General Don Morgan said. “With the success of flattening the curve in Saskatchewan, we believe it’s appropriate to lift the moratorium on non-urgent evictions.”

My research question

What actually happened with evictions in Saskatchewan during the pandemic, both during the partial moratorium and after it was lifted?

- This research contributes to the empirical literature on evictions and the practices of housing law tribunals
- Significant public & media interest in housing and evictions during the pandemic and beyond



Eviction law and procedure in SK

- Landlords can apply to the Office of Residential Tenancies for an order to evict a tenant for various reasons including:
 - Rent is 15 days or more in arrears;
 - Landlord or landlord's family want to live in the unit; **or**
 - Landlord wants to sell or renovate unit; **or**
 - Tenant behaviours (including repeated late rent, breaches of reasonable landlord rules, damage to property, or tenant doing things that put neighbours at risk)
 - Usually must give tenant a chance to address issue
 - But Il can apply for urgent eviction in certain circumstances

CHAPTER R-22.0001

An Act respecting Residential Tenancies and making consequential amendments to other Acts

PART I

Short title , Interpretation, Application and General Principles

DIVISION 1

Short title, Interpretation and Application

Short title

1 This Act may be cited as *The Residential Tenancies Act, 2006*.

Interpretation

2 In this Act:

(a) **“approved form”** means a form approved by the director pursuant to section 16;

(a.1) **“business day”** means a day other than a Saturday, Sunday or holiday;

(b) **“common area”** means any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants;

(c) **“director”** means the Director of Residential Tenancies appointed pursuant to section 14 and includes a deputy director;

Eviction law and procedure in SK

- Landlords must get an eviction order from the Office of Residential Tenancies (ORT)
- There is a hearing where the parties can present their cases to a Hearing Officer
- ORT moved to a telephone hearing system during the pandemic
- Eviction order is NOT supposed to be automatic. Hearing officer must consider whether eviction is “just and equitable in all the circumstances”



Methodology & limitations

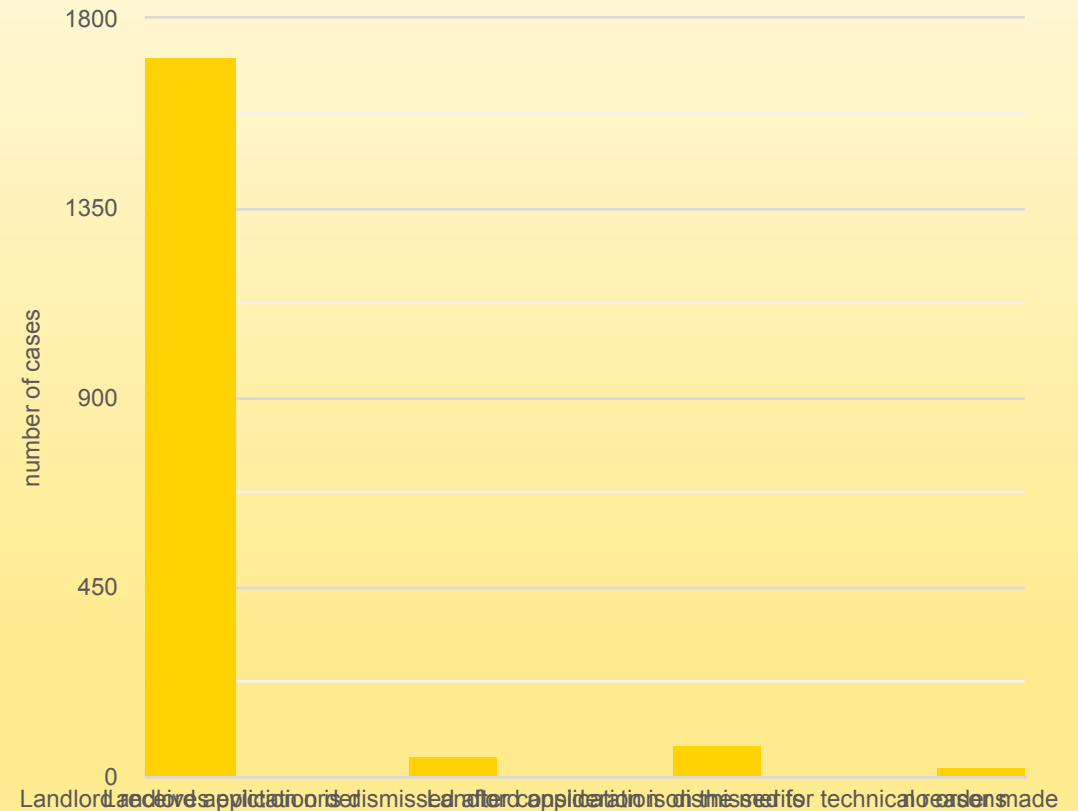
- I read all 1850 eviction decisions from 2020 (Jan 1-Dec 31) – *all available online*
- Jan-March decisions provided “pre-pandemic comparator” data
- Looked at what happened during partial moratorium and what happened after it was lifted
- Coded for various themes
- Limitations:
 - This study is only focused on “formal evictions” – most evictions are likely “informal”, happening in the “shadow of the law”.
 - Possible mistakes or inaccuracies in tabulation of cases, or mistakes in the published cases themselves.



Findings: (1) Landlords in SK received eviction orders over 90% of the time

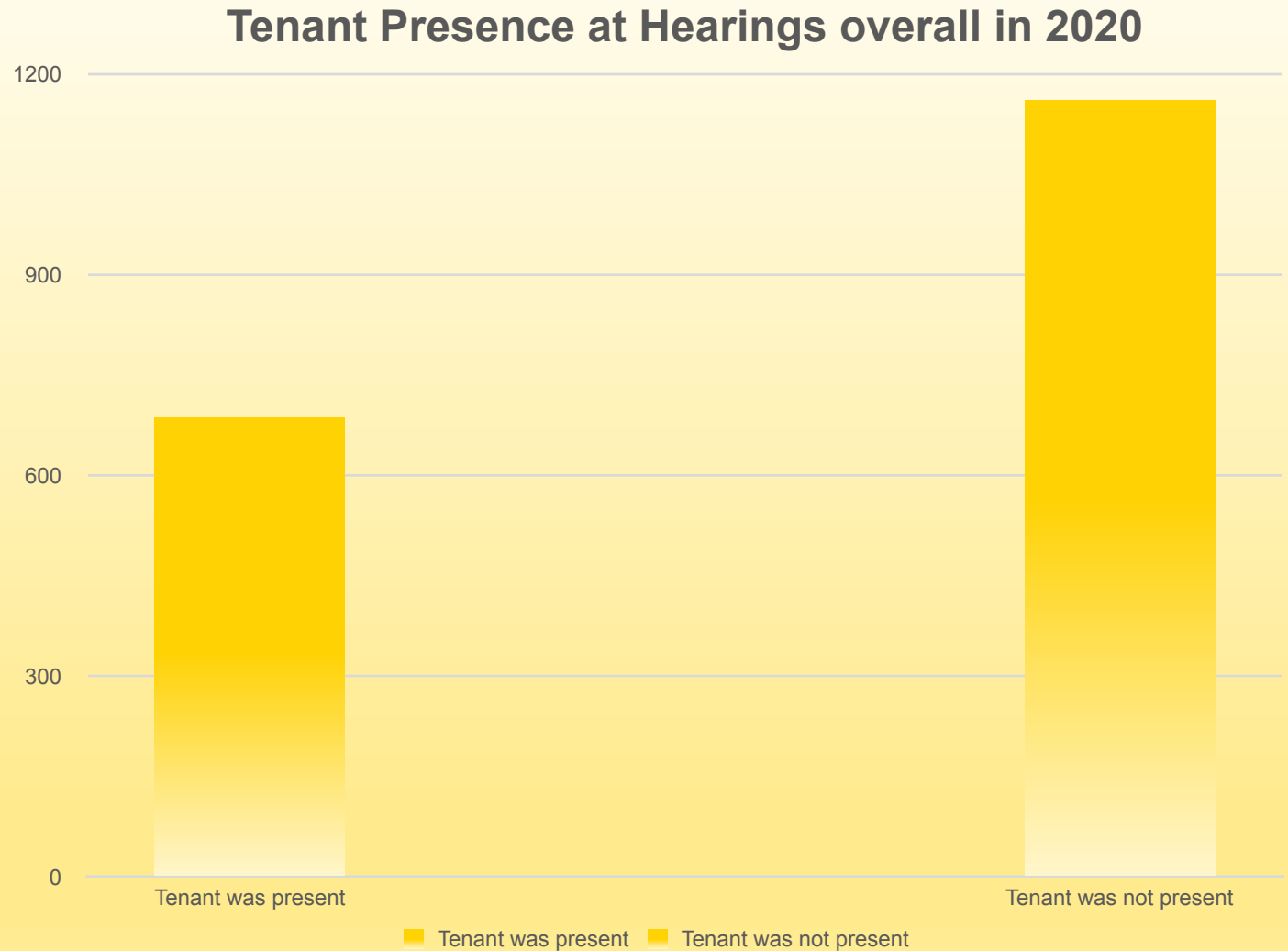
- Landlords almost always win – 92% success rate overall in 2020
- Even though government officials and the ORT itself stated that Hearing officers would consider issues & hardships relating to the pandemic in their decisions, the fact of the pandemic did not make a significant difference in terms of tenants' chances of success. Landlords won 97% of eviction cases before the pandemic, and 90% during the pandemic.

Eviction Hearing Outcomes in 2020



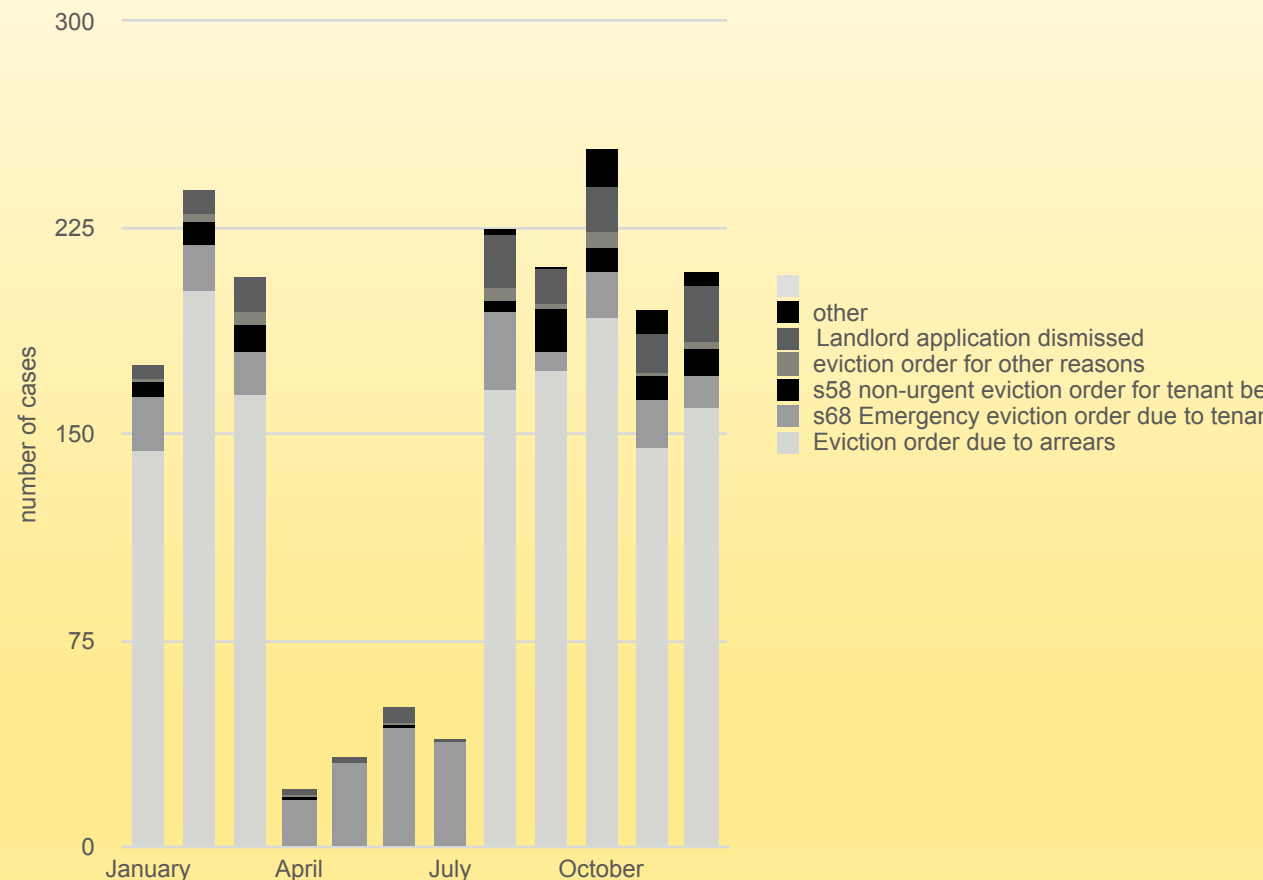
Findings: (2) Tenant access to the tribunal

- Most tenants (about 63%) did not attend their eviction hearings. This pattern did not change after the introduction of the telephone hearing system
- Raises access to justice concerns.
- Hearing officers tend to frame tenant non-attendance as “choice” but this is problematic
- I recommend legal aid assistance to renters facing eviction



Findings: (3) Evictions during the partial moratorium 2020 outcomes by month

- Partial moratorium led to a clear and dramatic reduction in actual numbers of evictions.
- Interestingly, landlords brought many more than usual “urgent” eviction applications during the period of the partial moratorium.
- Most of the “urgent” eviction applications were successful
- However, many of these “urgent” cases were arguably not truly “urgent”. Examples:
 - a) Tenant evicted for smoking in their unit;
 - b) Tenant evicted because landlord had sold the unit;
 - c) Tenant involved in loud partying and making too much noise;
 - d) Cases that seemed to revolve primarily around rental arrears
- My conclusion: people were evicted during the period of the partial moratorium for non-urgent reasons



Findings: (4) Corporate landlords evict most often

- Media and II advocacy groups tend to portray landlords as “mom and pop” landlords
- However, 57% of landlords pursuing eviction orders during pandemic were corporate landlords. (including large REITs, numbered companies from SK, AB, BC & ON, national property management cos)
- Larger trend of “financialization of housing” in Canada
 - “residential rental properties remain a resilient performer in an asymmetric recession” – Western Investor, 14 Dec 2020
 - “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” – Meridian Capital group, April 7, 2020
- American research has shown that corporate landlords are much more “at mercy of their spreadsheets” whereas individual landlords were more likely to work with tenants to avoid eviction.



Findings: (5) Reasoning of hearing officers

- Most decisions did not include the required “just and equitable” analysis.
- Most decisions show that the Hearing Officer accepted the landlord’s evidence without question
- Possible errors of law noted in many decisions
- Reasons?
 - a) Do hearing officers identify closer with property owners?
 - b) Emphasis on speedy decisions
 - c) Lack of tenant evidence and advocacy?



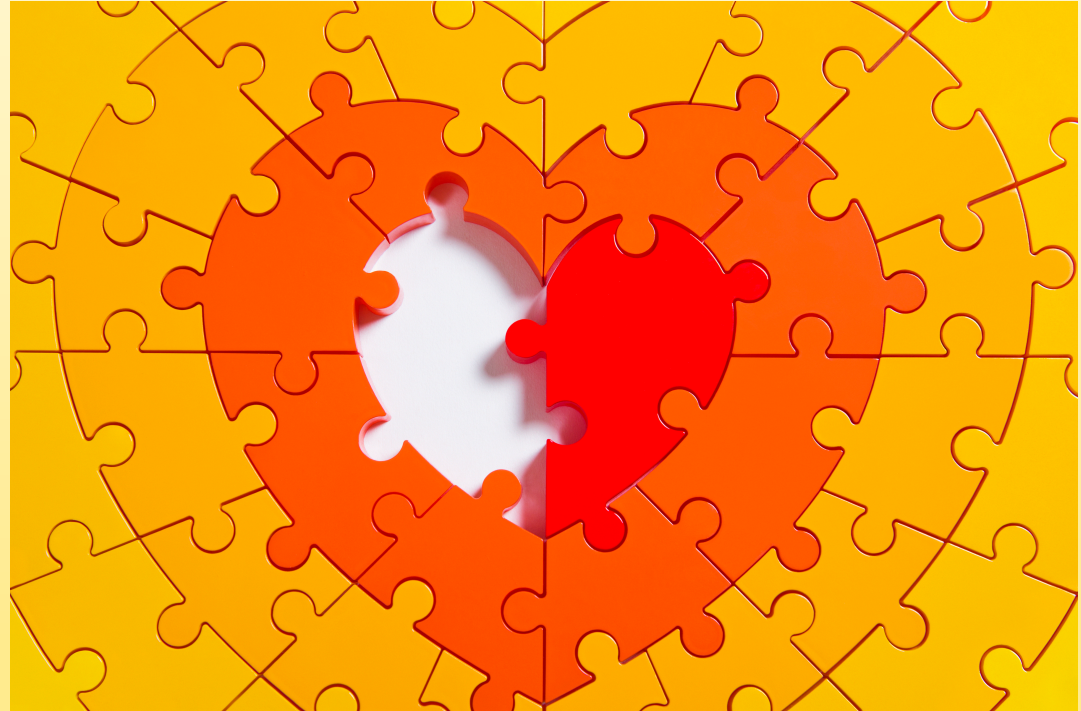
Conclusions

- In a pandemic year almost 1700 vulnerable tenants faced eviction orders in our province
- My study raises serious questions about access to justice for tenants facing eviction
 - Most tenants did not appear at their hearings, meaning decisions were made without the benefit of tenant evidence or advocacy
 - But even were tenants showed up, landlords almost always received eviction orders. My research raised questions about the thoroughness & fairness of the decision-making process in many cases
 - Partial moratorium reduced the volume of eviction cases but landlords continued to win vast majority of “urgent” cases
 - Pandemic was “invisible” in vast majority of the decisions



Recommendations

- Legal aid for tenants
- Training for hearing officers
- More diverse hearing officers
- Diversion program to respond more holistically to vulnerable tenants
- Legislative reform such as “right to cure”
- Ultimately – working to create a society where tenants can afford to pay their rent and live securely in their homes without fear of eviction



Thank you!

sarah.buhler@usask.ca

Link to my article about this research: <https://digitalcommons.osgoode.yorku.ca/jlsp/vol35/iss1/4/>