

## Ontario Licence Appeal Tribunal (LAT) - Tips

These are tips – not legal advice. Always consult a professional for legal advice. If you are considering an appeal to Ontario’s Licence Appeal Tribunal (LAT) to fight a Tarion decision, it’s critical to recognize that even though you can represent yourself there, this is a legal process. To our knowledge, Tarion has never appeared at the LAT against a homeowner without legal representation. Tarion and its lawyers know how the LAT operates.

**Tip 1 -- Be prepared.** Here are a few web-sites that you should read and thoroughly understand in order to help you prepare:

- a) The Ontario New Home Warranties Plan Act (the Act) and the related Regulations, as well as Tarion’s site. **It is important to note that the person hearing your appeal, (i.e., the adjudicator /Chair) is only able to work within the wording of the Act.**
- b) Previous decisions from the LAT that are available on the CanLII website.
- c) The LAT’s website.



**Tip 2 -- Consider retaining the services of a lawyer to represent you** -- preferably a lawyer who has appeared at the LAT and won against Tarion. Many homeowners find the LAT documents – and the LAT process – intimidating. One way to find an experienced lawyer is to look through the previous decision cases from the LAT.

**Tip 3 -- Consider retaining the services of a home inspector/engineer who is experienced at the LAT** (and someone who has won at the LAT) to help substantiate your appeal. Do your research to find the right home inspector/engineer to help you. Here is a link with information on home inspections and hiring a home inspector, including tips for hiring a home inspector: <http://canadiansforproperlybuilthomes.com/what-weve-learned/home-inspections/>

### Tip 4 -- Recognize:

- The onus is on you to prove that:
  - o the item should be warranted,
  - o what it will take to properly fix it, and
  - o what it will cost to fix it. We suggest that you obtain at least two quotes.
- If you are fighting what you consider to be an “illegal substitution”, you will need to provide proof.
- If you lose, and the probability is high that you will<sup>1</sup>, you may be charged a portion of the other side’s legal costs.
- For homes purchased prior to July 2023, there is a maximum allowable payout by Tarion of \$300,000. On or after July 1, 2023, the maximum (cap) is \$400,000. Note: If Tarion hires an engineer or someone to write a report about your home, these costs may be charged against your home’s cap. You can ask Tarion in advance of going to the LAT for a statement of what has been charged to your cap.
- The LAT cannot enforce its own orders.

---

<sup>1</sup> CPBH has been analyzing homeowners’ success rates fighting Tarion at the LAT since 2006. Sadly, and unacceptably, **homeowners have lost about 85% of the time** during this period. Major structural defect claims have rarely won at the LAT. In recent years, relatively few homeowners have pursued Tarion at the LAT.

**Tip 5 -- Ask yourself:**

- Is your claim covered within in the Act? Should it be warranted? Do you have a valid legal argument? (Sometimes homeowners feel that they have been wronged by Tarion and want to try to get some sort of justice at the LAT. But the LAT can only work with what is in the Act.)
- Can you prove it, e.g., with a written report prepared by an expert, and/or an expert witness to testify on your behalf at the LAT? If you can prove it, obtain a written estimate showing the scope of work and what it would cost to fix it.

**Tip 6 -- Follow the LAT process carefully.** For example, file all items you wish to use as evidence including your agreement of purchase and sale as part of the LAT process. You can try to bring new paperwork with you to the hearing, but it will most likely be inadmissible.

**Tip 7 -- Be informed of previous rulings denying homeowner claims.** Search through some of the old decisions on CanLII that may be similar to your case. Here are some examples of statements from the LAT in previous rulings that denied homeowner claims:



“It is not visible from a normal viewing distance”  
“Normal shrinkage”  
“Lack of homeowner maintenance”  
“Normal wear and tear”  
“Damage may have occurred after you moved in”  
“Nail pops are “normal” Are they? If you don’t think so, you need to prepare for this type of statement and prove your position. You will also need a professional estimate as to the scope of work and cost to fix.  
“Ice damming is a “phenomenon” and therefore not the builder’s fault”(Is this true on your case? Was the roof built correctly? Are there any code violations? Is your insulation adequate? What about venting, flashing and ice membrane? Have you suffered a loss as a result? Inspection(s) by qualified professionals, including scope of work and estimate(s) are needed.)

It is also important to note that some LAT adjudicators have used Tarion’s own Construction Performance Guidelines to make their decision at the LAT.

**Tip 8 -- If you decide that the LAT isn’t right for you, you can always consider the regular courts,** including Small Claims Court where you can also represent yourself.

Good luck as you move forward!