

## **Implementation of a Tenant Defence Fund**

*(City Council on November 23, 24 and 25, 1999 amended this Clause by:*

*(a) deleting Recommendation No. (1) of the Policy and Finance Committee and inserting in lieu thereof the following new Recommendation No. (1):*

*“(1) the recommendations of the Community Services Committee embodied in the communication dated November 4, 1999, from the City Clerk, be adopted, subject to the Tenant Defence Fund for the year 2000 being capped at \$300,000.00;”;  
and*

*(b) adding thereto the following:*

*“It is further recommended that:*

*(1) the joint report dated November 22, 1999, from the Commissioner of Community and Neighbourhood Services and the Chief Financial Officer and Treasurer, be adopted, subject to:*

(a) *amending Recommendation No. (2)(a) embodied therein:*

(i) *to provide that the mandate of the Rental Housing Office include the development of a strategy for community development and organizing in buildings which do not currently have an organization of tenants but which are facing rent increases, conversions, demolitions or significant numbers of evictions; and*

(ii) *by adding thereto the following words:*

*'implementing a purchase of service arrangement to organize tenants to appear at the Ontario Rental Housing Tribunal and assist with other tenant issues';*

(b) *amending Recommendation No. (2)(b) embodied therein by adding thereto the following words:*

*'and due to the critical situation concerning rising evictions and the necessity of expanding eviction information and assistance services while awaiting the approval of the results of the RFP (expected in July 2000), the Commissioner of Community and Neighbourhood Services be requested to submit a report to the Community Services Committee for its next meeting to be held on December 1, 1999, on the options for a six-month temporary expansion of the existing evictions hotline and related services to meet the requirements;';*

(c) *adding the following new Recommendations Nos. (2)(c), (2)(d) and (2)(e):*

(c) *establishing a Rental Housing Advisory Committee to consist of Councillors, tenant organizations, legal aid clinics, and housing staff to assist staff in developing a proposed structure and staffing strategy for the Rental Housing Office;*

(d) *having the Rental Housing Office up and running by January 1, 2000; and*

(e) *inviting Legal Aid Ontario to participate in the discussions of the Rental Housing Advisory Committee and to continue to work with staff;';*

(d) *adding to Recommendation No. (3) embodied therein the following words:*

*'with the instruction that the funds referenced be submitted to Council for approval as a part of the pre-authorized approval process, in order that these activities can begin within the first few weeks of the year 2000'; and*

(e) *adding thereto the following new Recommendation No. (5):*

*'(5) Council instruct the Rental Housing Advisory Committee, in consultation with legal aid clinics and tenants' organizations, to develop a list of priority test cases for the immediate attention of the Housing Specialty Clinic;';*

(2) *the City of Toronto establish a tenant advocacy function with staff dedicated to assist Councillors to represent their tenants;*

(3) *advocacy shall not include being associated with or being part of partisan political activity;*

(4) *Council reiterate the request made through the Community Services Committee to the Board of Directors of Legal Aid Ontario to provide more legal aid assistance to tenants disputing above-guideline rent increases and the Commissioner of Community and Neighbourhood Services be requested to report back to Council, through the Community Services Committee, in six months' time, on the level of advocacy assistance being provided to tenants to oppose above-guideline rent increases;*

(5) *Legal Aid Ontario also be requested to provide more legal assistance to tenants disputing eviction proceedings, and the Commissioner of Community and Neighbourhood Services be requested to address the response to this request to Legal Aid Ontario in her forthcoming report;*

(6) *the report dated November 22, 1999, from the City Solicitor, embodying the following recommendation, be adopted:*

*'It is recommended that Council encourage the provincial and federal governments to enter into an information-sharing agreement so that CCRA (Canada Customs and Revenue Agency) will have accurate information.';*

(7) *the City Solicitor, in consultation with any outside counsel deemed necessary, be requested to submit a report to the Community Services Committee on the possible challenges which may exist to the constitutionality of the Tenant Protection Act and its regulations, insofar as it pertains to the provisions which designate a landlord as the sole agency whereby notification of impending eviction is to be provided to a tenant;*

(8) *the Commissioner of Community and Neighbourhood Services be requested to:*

(a) *submit a report to the Community Services Committee, for subsequent submission to the Policy and Finance Committee and Council, on the*

*feasibility of establishing a Rental Housing Office in each of the four districts and the budget implications thereof;*

- (b) *submit a report to the Community Services Committee on the progress made by Legal Aid Ontario in:*
  - (i) *establishing a new specialty tenants' legal clinic;*
  - (ii) *eliminating geographical gaps in the community legal clinic system in Toronto; and*
  - (iii) *expanding and making the Tenant Duty Counsel Service permanent; and*
- (c) *submit a report to the Policy and Finance Committee, in one year's time, on the results of this initiative.”)*

**The Policy and Finance Committee recommends that:**

- (1) the Recommendations of the Community Services Committee embodied in the communication (November 4, 1999) from the City Clerk, be received;**
- (2) Council urge the Province of Ontario to provide more tenant legal aid services in Toronto by increasing funding to community legal aid clinics;**
- (3) the Province of Ontario be requested to:**
  - (i) provide earlier notification to tenants on applications for above-guideline rent increases;**
  - (ii) review the accessibility to buildings and documents by the tenants associations;**
  - (iii) review the performance of its adjudicators to determine if they can improve the calibre of the people adjudicating these matters; and**
  - (iv) provide an analysis of the Ontario Rental Housing Tribunal decisions to give the public the ability to evaluate the Tribunal's performance;**
- (4) the Greater Toronto Apartment Association be invited to set standards for the industry with respect to the maintenance and refurbishing, through their capital projects, of the buildings owned by their membership;**
- (5) a representative from the Province of Ontario be requested to appear before the Community Services Committee to explain the function of the Ontario Rental Housing Tribunal; and**

- (6) **the Commissioner of Community and Neighbourhood Services be requested to submit a report to the Community Services Committee on a mechanism whereby the City can force the Province, if such is the case, to ensure that this quasi judicial body, is discharging its duties in a proper manner.**

The Policy and Finance Committee reports, for the information of Council, having:

- (1) requested the Commissioner of Community and Neighbourhood Services and the Chief Financial Officer and Treasurer to submit a joint report directly to Council for its meeting scheduled to be held on November 23, 1999, on an expanded tenant advice and information service funded by the City to further assist tenants in Toronto; and
- (2) requested the Commissioner of Community and Neighbourhood Services to consult with legal aid clinics that work with tenants in this area and report directly to Council for its meeting scheduled to be held on November 23, 1999, on their ability to address the issues raised in the report (October 21, 1999) from the Commissioner of Community and Neighbourhood Services and by the deputants appearing at the meeting of the Policy and Finance Committee on November 10, 1999.

**The Policy and Finance Committee submits the following communication (November 4, 1999) from the City Clerk:**

Recommendation:

The Community Services Committee on November 4, 1999, recommended to the Policy and Finance Committee:

- (i) that a Tenant Defence Fund be established, as referred to in the attached report dated October 21, 1999, from the Commissioner of Community and Neighbourhood Services wherein she recommends that:
  - (1) should Council decide to approve a role for the City in helping to organize tenants and to ensure tenants have adequate representation before the Ontario Rental Housing Tribunal (ORHT), that a Tenant Defence Fund be established in the manner outlined in this report;
  - (2) should the Committee recommend that a Tenant Defence Fund be established, this report be forwarded to the Policy and Finance Committee and to the Budget Advisory Committee as per the "Financial Control Protocols within the Revised Council-Committee Structure," which was adopted by Council; and
  - (3) the appropriate City officials be authorized to take the necessary action to give effect to these recommendations; and
- (ii) that the following recommendations contained in the communication dated November 4, 1999, from Councillor Michael Walker, Chair, Sub-Committee to Restore Rent Controls,

be referred to the Commissioner of Community and Neighbourhood Services for incorporation into her forthcoming report on implementation of a Tenant Defence Fund, and that she be requested to note the Committee's preference for Option No. 1 contained in the report dated November 3, 1999, from the Commissioner of Community and Neighbourhood Services respecting "Grants to Tenant Associations from the Proposed Tenant Defence Fund":

- "(1) That a Request for Proposal be issued for a pilot project to retain the services of an organization to:
- (a) manage the Tenant Defence Fund set out in the attached communication (A) entitled 'Tenant Defence Fund: Alternate Model'; and
  - (b) provide assistance to tenants in organizing to dispute above-guideline rent increases at the Ontario Rental Housing Tribunal.
- (2) That the Commissioner of Community and Neighbourhood Services prepare a further report to the Community Services Committee on how the Tenant Defence Fund granting process would work."

Background:

The Community Services Committee had before it the following report and communications:

- A. (October 21, 1999) from the Commissioner of Community and Neighbourhood Services responding to the request of the Planning and Transportation Committee on October 4, 1999, to report on further issues with respect to the establishment of a Tenant Defence Fund to help tenants with above guideline rent increases; advising that the establishment of a Tenant Defence Fund would require an unanticipated increase in the approved 1999 Operating Budget; and recommending that:
- (1) should Council decide to approve a role for the City in helping to organize tenants and to ensure tenants have adequate representation before the Ontario Rental Housing Tribunal (ORHT), that a Tenant Defence Fund be established in the manner outlined in this report.
  - (2) should the Committee recommend that a Tenant Defence Fund be established, this report be forwarded to the Policy and Finance Committee and to the Budget Advisory Committee as per the "Financial Control Protocols within the Revised Council-Committee Structure," which was adopted by Council; and
  - (3) the appropriate City officials be authorized to take the necessary action to give effect to these recommendations;

B. (October 6, 1999) from the City Clerk advising that the Planning and Transportation Committee on October 4, 1999:

- (i) endorsed the following action taken by the Toronto Community Council at its meeting on September 13, 1999, with respect to the Tenant Defence Fund:

“The Toronto Community Council:

- (1) endorsed the recommendations for a Tenant Defence Fund presented to the Planning and Transportation Committee, at its meeting held on September 13, 1999; and
- (2) supported the recommendations of the Sub-Committee to Restore Rent Control, including its request for a meeting with the Honourable Steven Gilchrist, Minister of Municipal Affairs and Housing.”;

and forwarded notice of its endorsement in this respect to the November 4, 1999, meeting of the Community Services Committee; and

- (ii) forwarded the action taken by the Toronto Community Council, as outlined above, to the other Community Councils with a request that they consider this matter and provide comment back to the Community Services Committee;

and further that the Planning and Transportation Committee, in part, requested the Commissioner of Community and Neighbourhood Services to report to the November 4, 1999, Community Services Committee meeting and to the next meeting of the Sub-Committee to Save Rent Control:

- (a) on the feasibility of funding the Tenant Defence Fund using one-fifth of 1 percent of all taxes paid by rental buildings in the City of Toronto; and
- (b) an indication of the tenant groups which are currently in need of experienced assistance by the City;

C. (October 14, 1999) from the City Clerk, Etobicoke Community Council, advising that the Etobicoke Community Council on October 13, 1999, directed that the Community Services Committee be advised of its support of the concept to establish a Tenant Defence Fund, subject to the report from the Commissioner of Community and Neighbourhood Services requested by the Planning and Transportation Committee on October 4, 1999;

D. (November 3, 1999) from the Commissioner of Community and Neighbourhood Services respecting Council’s ability to delegate granting power, in the event that Council decides to establish a Tenant Defence Fund as proposed by the Sub-Committee to Restore Rent Control;

- E. (November 3, 1999) from Ms. Anna Maria Recine-Pynn, Association Member 302, in support of the proposed Tenant Defence Fund;
- F. (November 4, 1999) from Councillor Michael Walker, Sub-Committee to Restore Rent Control, advising that the Sub-Committee at its informal meeting on October 29, 1999, recommended:
- “(1) That a Request for Proposal be issued for a pilot project to retain the services of an organization to:
- (a) manage the Tenant Defence Fund set out in the attached communication (A) entitled ‘Tenant Defence Fund: Alternate Model’; and
  - (b) provide assistance to tenants in organizing to dispute above-guideline rent increases at the Ontario Rental Housing Tribunal.
- (2) That the Commissioner of Community and Neighbourhood Services prepare a further report to the Community Services Committee on how the Tenant Defence Fund granting process would work.”;
- G. (November 4, 1999) from Mr. Sydney Palmer, member of the Tenants’ Association at 10 Shallmar Boulevard, Toronto, requesting funding from the proposed Tenants’ Defence Fund for a legal opinion on the critical issue of the Tribunal capital expenditure recognizing costs incurred by the previous owner;
- H. (November 4, 1999) from Mr. Abbas Kolia, Thorncliffe Park Tenant Coaliton, 65-71-75-79 Thorncliffe Park Drive Tenant Association, in support of the Tenant Defence Fund; and
- I. (November 4, 1999) from Ms. Anne Dubas, President, Canadian Union of Public Employees, Local 79, attaching a copy of a letter to The Honourable Claudette Bradshaw, Federal Co-ordinator for Homelessness, urging the Federal Governments to revive a national housing strategy and infrastructure program that will house the homeless and meet the needs of lower-income Canadians.

The following persons appeared before the Community Services Committee in connection with the foregoing matter:

- Mr. Brad Butt, Executive Director, Greater Toronto Apartment Association; and submitted a brief in regard thereto;
- Mr. Harry Hakomaki, The Building and Concrete Restoration Association; and submitted a brief in regard thereto;
- Mr. Paul York, Greater Toronto Tenant Associations;



- Mr. Paul Arvisais, LG Tenants' Association;
- Mr. Morris Stein;
- Ms. Marie Catherine; and submitted a brief in regard thereto;
- Mr. Howard Tessler, Federation of Metro Tenants' Associations;
- Ms. Maria Schabelski, on behalf of Mr. Jim Davison, President, 450 Walmer Road Tenants' Association;
- Ms. Janet McLeod;
- Ms. Ruth Easton, 47 Thorncliffe Park Tenants' Association;
- Mr. Vince Vresvia, Labourers Local 183;
- Ms. Mira Price; and
- Ms. Elinor Mahoney, Tenants' Advocacy Group.

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(Report dated October 21, 1999, addressed to the  
Community Services Committee from the  
Commissioner of Community and Neighbourhood Services)

Purpose:

The purpose of the report is to discuss implementation of a Tenant Defence Fund to help tenants deal with above guideline rent increases.

Financial Implications:

As the establishment of a Tenant Defence Fund would require an unanticipated increase in the approved 1999 Operating Budget, this report should be forwarded to Policy and Finance Committee and to Budget Advisory Committee as per the "Financial Control Protocols within the Revised Council-Committee Structure" which was adopted by Council.

Recommendations:

It is recommended that:

- (1) should Council decide to approve a role for the City in helping to organize tenants and to ensure tenants have adequate representation before the Ontario Rental Housing Tribunal (ORHT), that a Tenant Defence Fund be established in the manner outlined in this report;

- (2) should the Committee recommend that a Tenant Defence Fund be established, this report be forwarded to Policy and Finance Committee and to the Budget Advisory Committee as per the “Financial Control Protocols within the Revised Council-Committee Structure” which was adopted by Council; and
- (3) the appropriate City officials be authorized to take the necessary action to give effect to these recommendations.

#### Council Reference:

At its meeting September 13, 1999, the Planning and Transportation Committee gave consideration to a report (August 24, 1999) from Councillor Michael Walker, Chair, Sub-Committee to Restore Rent Control, respecting a Tenant Defence Fund. The report included a request that the Planning and Transportation Committee endorse a recommendation to establish a Tenant Defence Fund, in principle, to assist tenants and tenant associations in opposing unreasonable above-guideline rent increases. The Planning and Transportation Committee referred the report to the Commissioner of Community and Neighbourhood Services, with a request that the Commissioner report back to the Committee in consultation with the Chief Financial Officer and the Acting Commissioner of Urban Planning and Development Services on October 4, 1999.

At its meeting of October 4, 1999, the Planning and Transportation Committee considered a report from the Commissioner of Community and Neighbourhood Services. The Commissioner indicated that consultants had been hired in July to consult with the tenant and landlord community and to recommend a role for the city in providing information and support services to tenants. As this work is directly relevant to the proposed Tenant Defence Fund, the Commissioner suggested it would be premature to comment on the Fund before the results of this work were available. The Committee also asked all the Community Councils to comment on motions being put forward by Toronto Community Council on this matter.

The Committee also requested that staff report on: any tenant groups presently in need of expanded assistance by the City; and the feasibility of funding the Tenant Defence Fund using one fifth of 1 percent of all taxes paid by rental buildings in the City. These issues are addressed in this report.

Staff of Planning, Social Development, Municipal Standards, Legal and Finance service areas have been consulted in the preparation of this report.

#### Background:

##### Above-Guideline Rent Increases

The Province’s *Tenant Protection Act* (TPA) which is administered by the Ontario Rental Housing Tribunal, has made significant changes to the rules for allowing landlords to increase rents above the rent control guideline. Although it is still necessary for landlords to make an

application for an increase above the guideline, and to prove the need for this increase, the process and grounds have changed.

Tenants receive less notice of the landlord's application for an above guideline increase than under prior rent regulation laws. Under the TPA, the landlord needs only to give notice to the tenants ten days before the hearing, as opposed to prior legislation which required the landlord to provide a copy of the application to all tenants at least 80 days before the first date of the first rent increase proposed by the application, and gave tenants anywhere from 25 to 55 days or more to respond. As a result, under the TPA tenants have very little time to examine the above guideline application and to organize a response. Preparing the response may also be costly if technical assistance is required, such as a lawyer, accountant or person with expertise in matters of capital work.

In addition to changes in the process, the grounds upon which the tenants may argue against the above guideline increase have been substantially reduced. Under previous legislation, tenants could argue that the proposed increase should be offset because of other maintenance problems, reduced or withdrawn services and facilities, or because the capital expenditure work claimed on the landlords application was required because of ongoing neglect of the problem by the landlord. These tenant arguments are no longer considered as part of the landlords application. Instead, tenants would need to file their own application where there has been a breach of maintenance obligations and/or loss or reduction of services or facilities.

Based on information provided to Lapointe and Welch (related to the broader review of tenant and landlord services), we know that there have been 545 applications from landlords to increase their rents above the rent guideline during the first year of the TPA, affecting 55,000 units. The chart in Appendix A shows that a large number of these applications were made in December of 1998 which was the deadline for applying for above guideline increases based on capital costs incurred from 1996-1999. At present there is a backlog of at least 300 AGI applications before the ORHT that will take at least six months to process. Further detail on application and order activity under the TPA is provided in Appendix A.

Recently, a request under the Provincial Freedom of Information and Protection of Privacy Act was submitted to the Ontario Rental Housing Tribunal by City Planning staff for detailed information about above guideline increase applications (including number of units affected, increases awarded) and about eviction applications (reasons for applications, number of evictions ordered, etc.)

At the October 4, 1999, Planning and Transportation Committee meeting staff were asked to seek an adjournment of hearings before the Tribunal where we felt it was essential. Since such information is not available publicly, staff have requested of the Tribunal a full list of all upcoming applications for AGI's scheduled for hearings in the next few months. Staff have also consulted with individuals who are providing services to tenants at hearings, and may be alerted of cases where City intervention is warranted. It should be noted that, to date, Tribunal adjudicators have generally granted adjournments where tenants themselves have requested them at the hearings, if they can demonstrate that they have had inadequate time to prepare. It must

also be noted that in a recent case where the City has sought standing before the Tribunal in order to request an adjournment (One Clarendon Place), we were denied standing.

On October 4, 1999, staff were also asked to determine the number of tenants' groups that are presently in need of expanded assistance from the City. "The Review of Information and Advisory Services for Tenants and Landlords" (also before the Community Services Committee) describes the full range of agencies supporting tenants and notes that there is a general lack of resources for tenant organizing and representation. Almost certainly a large number of the more than 300 AGI cases now before the Tribunal could benefit from financial assistance, but we would suggest that any direct City support (if it is to be offered) is best provided in the manner proposed below for the Tenant Defence Fund.

Comments on "Unreasonable" Increases:

Staff were asked by the Planning and Transportation Committee to also comment on what might represent an "unreasonable" rent increase. While we do not feel it is possible to make a general determination as to what percentage would constitute an unreasonable rent increase, we can provide information on what the Tribunal considers to be "reasonable." In making a determination on an application for an increase above the guideline due to capital expenditures (and the vast majority of applications to date are for recovery of capital expenditures), the Tribunal member is permitted to disallow any capital expenditure they decide is "unreasonable." The TPA does not define "unreasonable"; rather, it describes which capital expenditures would not be considered "unreasonable". A capital expenditure will not be considered "unreasonable" if:

- (a) it is necessary to protect or restore physical integrity;
- (b) it is necessary to maintain maintenance, health, safety or other housing related standards required by law;
- (c) it is necessary to maintain provision of plumbing, heating, mechanical, electrical, ventilation or air conditioning systems;
- (d) it provides access for persons with disabilities;
- (e) it promotes energy or water conservation; or
- (f) it maintains or improves the security of the residential complex.

Therefore, any rent increases (related to capital expenditures) that are not based on any of the above guideline will be considered unreasonable by the Tribunal.

Proposal for a Tenant Defence Fund:

The Tenant Defence Fund (TDF) was proposed by the Sub-Committee to Restore Rent Control to assist tenants and tenants associations wishing to oppose unreasonable above guideline rent

increases at the Ontario Rental Housing Tribunal. The TDF aims to provide assistance in organizing and representing tenants, as well as technical assistance to dispute the landlord's repairs (or other matters related to the application) at Tribunal hearings. The Sub-Committee proposed that the TDF be used to hire two tenant consultants or organizers who could assist tenants effectively in organizing and presenting their case at the Tribunal hearings, and one construction engineer/consultant who could testify as an expert on behalf of tenants at the hearings.

The proposal also discussed how the services would be provided and presented several options for further consideration, including: hiring the required staff internally to work in the Shelter, Housing and Support Division, issuing a Request for Proposals to solicit individuals outside of the Corporation, or involving the Federation of Metro Tenants' Associations. Another part of the strategy was to consider how a system and criteria would be established for managing the TDF, including the possibility of providing intervenor funding to groups needing assistance.

While the proposal requested \$300,000.00 for the TDF, the Planning and Transportation Committee asked staff to explore the feasibility of allocating one-fifth of 1 percent of property tax revenue from rental buildings to set up the fund.

Discussion:

Strategy for Above-Guideline Rent Increases:

Staff have been asked to comment on the Tenant Defence Fund (TDF) proposal, and in particular to develop a plan for its implementation.

The Committee should consider the TDF proposal in the context of the broader Information and Advisory City role and related actions recommended in my report on the Review of Tenant and Landlord Services, which is also before the Community Services Committee.

There are a number of merits for establishing a Tenant Defence Fund at this time. First, as noted above, there are a large number of AGI applications (more than 300), currently before the Tribunal to be processed over the next six months or more, affecting about 55,000 tenant households. Very little summary information is available on these applications, but we are aware that many are made to recover the landlord's costs for capital expenditure work, and may result in rent increases of up to 4 percent above the rent control guideline, with additional above guideline increases phased-in over the next few years. Given the City's interest in protecting the affordable housing stock, we have an interest in the outcome of these applications. In addition, taking steps to avoid large above guideline increases for low income tenants may be cost effective in that significantly increased rents can lead to economic evictions which puts greater pressure on City-funded rent bank and hostel services programs.

There are also arguments against the City taking direct action on the matter of AGI's. First, the grounds for opposing an AGI application before the Tribunal are well-defined and limited and there is little chance that an AGI application will actually be denied – rather, there is a greater likelihood that the level of increase might be reduced by one or two percent based on evidence

that is brought forward (and the resultant orders do not limit what the landlord may charge to a new tenant who moves in after the first effective date of the order). Second, from a housing stock point of view, some rental housing is in need of major repair and work must proceed in order to ensure its longevity. In the absence of housing programs (such as an expanded federal rental repair program) the costs of such repairs must be covered through increased rental revenues. Third, the City must be cautious in the approach it takes to help tenants represent themselves before the Tribunal (see Legal comments below). In the past, the former municipalities may have become directly involved in similar matters where there is a clear municipal interest that goes beyond the direct interest of the parties involved. In general, the broad effect of AGI's on the affordability of the rental stock is of municipal interest, but it would be difficult to identify individual AGI applications where there is a significant municipal interest.

The City Solicitor has provided a legal opinion which can be summarized as follows:

- (1) if the proposed fund is to provide direct grants to tenants and/or tenants' associations, clear eligibility criteria must be established and the grants must be deemed by Council to be in the interest of the Municipality. In particular, if the grants are intended to help tenants oppose "unreasonable" above-guideline rent increases, there must be clear criteria for determining the reasonableness of a given application, and the municipal interest would be best supportable where issues of broad implication to tenants other than the applicants are at stake.
- (2) the City has no authority to act on behalf of tenants by acting as an agent for them before the tribunal or to provide expert witnesses on their behalf. Such advocacy would be in the name of the tenant rather than in the name of the City, as the City has no legal interest in the application. Furthermore, the City could be found liable for any damages sustained by the tenants if incorrect or misleading advice is given and the tenant acts on such advice to his/her detriment.
- (3) the City could contract with existing outside organizations to assist tenants in disputing above guideline rent increases, by issuing a request for proposals for these services, maintaining a list of tenants who are referred and monitoring the progress of the applications. However, the City should limit its liability under such a contract and such an arrangement would best be structured as a grant (to avoid the appearance that the City is doing indirectly what it does not have the power to do directly).

It can be concluded that, in general, the City cannot play a direct role in AGI hearings (i.e., directly organizing, advising and representing tenants), but it could provide support through a grant process (with clear criteria) if it deems such support to be in the interest of the municipality. However, as noted in our other report on the "Review of Information and Advisory Services for Tenants and Landlords", we suggest that the City's primary role should be to ensure that tenants have information and advice related to the TPA. We would note that the City is considering more direct involvement because the Province, which is the authority responsible for the Tenant Protection Act, has chosen not to redress the lack of resources in this area. As noted in our report on the "Review of Information and Advisory Services", the City should request that the Province take appropriate action, and we have recommended that Council

ask the Province to: provide earlier notification to tenants of AGI applications and expand the support available to tenants through the Legal Aid system.

#### Implementation of the Tenant Defence Fund:

If the City chooses to proceed with a Tenant Defence Fund to support tenants dealing with AGI's, we would suggest an adjustment to the proposed approach, in light of the issues raised above. We feel the work would be carried out more effectively and efficiently by an agency or individuals outside the Corporation, focused specifically on this project. We would specifically propose that the activity be broken into two components, as follows:

#### Component 1: Identifying "Significant" Cases:

A Request for Proposal would be issued immediately for the purposes of providing a grant to an agency or individuals to perform the following tasks:

- (a) review the backlog of more than 300 cases before the Tribunal (staff are taking steps to obtain this data now);
- (b) obtain and review new AGI applications as soon as they are filed with the ORHT (unlike the 10-day notice that tenants receive prior to hearings, such applications must be filed 90 days before an increase is to take effect, providing some time to inform and meet with tenants); and
- (c) identify a select number of cases that are "significant" to the City, meeting one or more of the following criteria: involving a large number of vulnerable, low income tenants; potentially precedent-setting in terms of ORHT practice or decision-making; significant loss of affordability (i.e., potential for high cumulative rent increase and/or rents that are currently modest).

#### Component 2: Providing Technical Support to "Significant" Cases:

The agency/individuals hired would recommend to the Commissioner a number of AGI applications to be supported by the City, on the following basis:

- (a) they are "significant" to the City based on the criteria above and supported by a rationale developed by the hired agency/individuals; and
- (b) the support to be provided would be tailored to each case, based on the advice of the hired agency/individuals, e.g., expert technical witness, organizational support, translation, special legal expertise, etc.

It is very difficult to anticipate the overall level of funding that would be required. We would propose that this be operated as a pilot project using the amount of \$300,000.00 that was suggested in the original TDF proposal. \$100,000.00 should be allocated to Component 1, to cover staffing (i.e., two community workers/consultants) and expenses (related to

research/analysis and meeting with tenants and other parties to AGI applications). This then makes \$200,000.00 available for technical support in Component 2, based on recommendations made from the hired agency/individuals to the Commissioner. The Component 2 funding should be made available immediately so that support could be provided to applications coming up for hearings before the Tribunal in the near future.

Staff were also asked to report on the feasibility of funding the TDF using one-fifth of 1 percent of all of the taxes paid by rental buildings in the City. According to Finance staff, this amount of funding represents \$1.3 million in 1999 (i.e., with “rental” defined as tenanted, self-contained units in residential buildings on the tax roll). Regardless of the source, if the funding is to come from the existing tax base, it would have a significant impact in that it is an unanticipated increase in the approved operating budget beyond the level that existing revenues will cover. It is recommended that Council make a policy decision on whether a TDF should be established, and that appropriate staff report on a source of funds through the protocols established by Council.

Conclusion:

Over 300 applications for above guideline rent increases, are currently waiting to be processed under the Tenant Protection Act. In order to support tenants dealing with these applications, it has been proposed that a Tenant Defence Fund be established. Generally, the City would not provide such direct support unless there was a clear municipal interest at stake. Should Council decide to proceed with this strategy, there should be a process for identifying cases that are of “significance” to the City and the assistance should be tailored to each case.

Appendices:

- A. Application and Order Activity under the *Tenant Protection Act*

Contact Name:

Joanne Campbell, General Manager, Shelter, Housing and Support, Tel: 392-7885,  
Fax: 392-0548

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## Appendix A

### Application and Order Activity Under the *Tenant Protection Act*

#### (1) Above Guideline Rent Increases:

##### Process for Notifying Tenants:

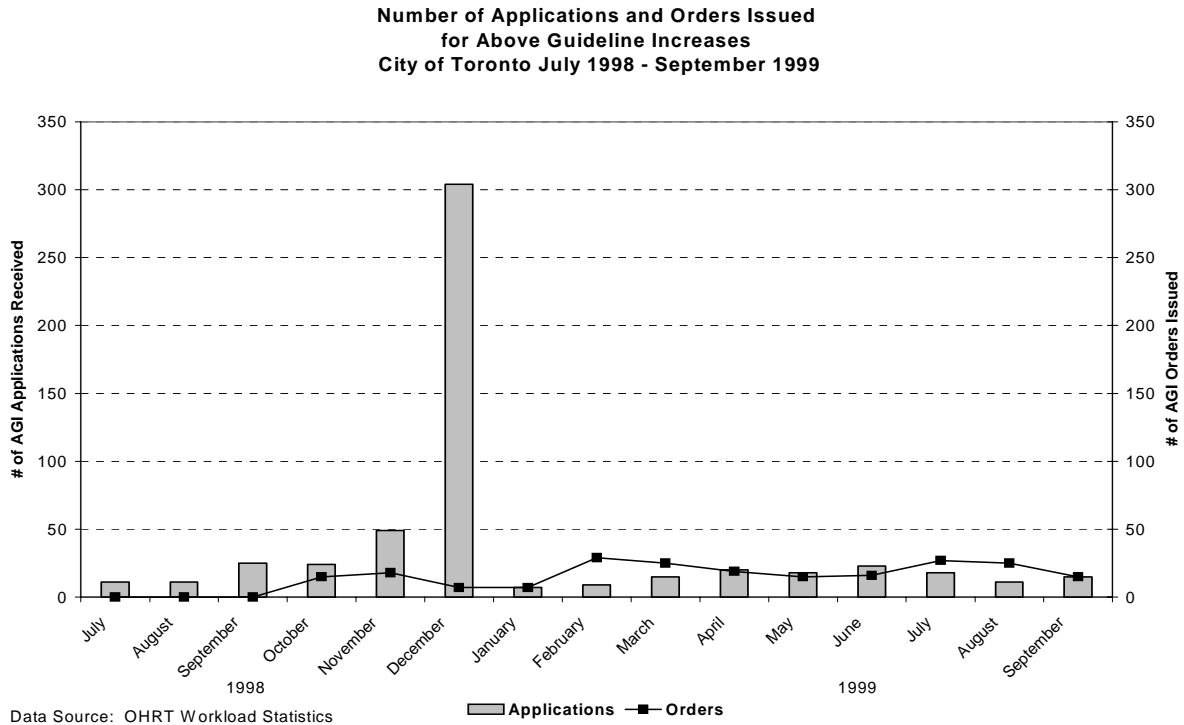
While tenants may first become aware of their landlords' intention of applying for an above guideline increase through the notice of rent increase they receive 90 days before the effective date, the notice does not give any indication about when the application has been filed or when the hearing is scheduled. Therefore, tenants do not know how much time they have to prepare for the hearing until they contact the Tribunal about the application or until they receive the landlord's notice of hearing. Under the Ontario Rental Housing Tribunal's rules of practice and procedure, landlords are required to give notice at least 10 days before the hearing but many of them would only meet the minimum requirement and leave the notification to the last 10 days. However, applications for above-guideline increases are often complex and involve extensive technical and financial documentation. It is therefore difficult for tenants to prepare a response without sufficient time to examine the information.

##### Backlog of Applications:

As a result of problems with the short time period for notification, many tenants have requested the Tribunal to grant adjournments of their hearings to a later date. This has created a backlog through the system from the date the landlord files an application to the date the hearing is held. Tribunal data show that, between the date of proclamation of the TPA (June 17, 1998) and September 30, 1999, there were altogether 545 applications for above-guideline increase and of these, only 218 applications have gone through a hearing resulting in the issuance of an order. As indicated in the following chart, in December 1998 alone, about 300 applications were filed, but the system did not move quickly enough to schedule hearings for the applications. This means that 342 cases, affecting about 55,000 tenant units, are still waiting to be resolved.

The delay in scheduling hearings may sometimes result in an order being issued after the annual rent increase should take effect. This can create uncertainty and confusion as to what amount of rent the tenants should pay on the rent increase date. By law, when this happens, tenants have the options of paying either the above guideline amount in the notice of rent increase, or just the amount based on the guideline increase, until the order is issued. In practice, neither of the two options would help the tenants, especially those with few financial resources, for the reasons that: first, some tenants may not be able to pay the above guideline increase upfront while waiting for a hearing; secondly, if the tenants choose to pay less than what was requested in the application, they will have to pay the difference for every month that has passed since the rent increase date and the date the order is issued; thirdly, in some cases, the Tribunal may order an increase less than what the landlord requested but the tenants have already paid for the increase. While the landlord must pay the difference between the higher rent and the ordered rent, tenants

may not necessarily continue to pay the ordered rent, as the landlord may be able to increase the rent to maximum or charge for an additional service.



The Tribunal has recently issued a letter indicating that they are considering some procedural changes to deal with the delays. Consideration may be given to lengthening the time requiring landlords to serve the Notice of Hearing and redistribution of work to allow for a more efficient process.

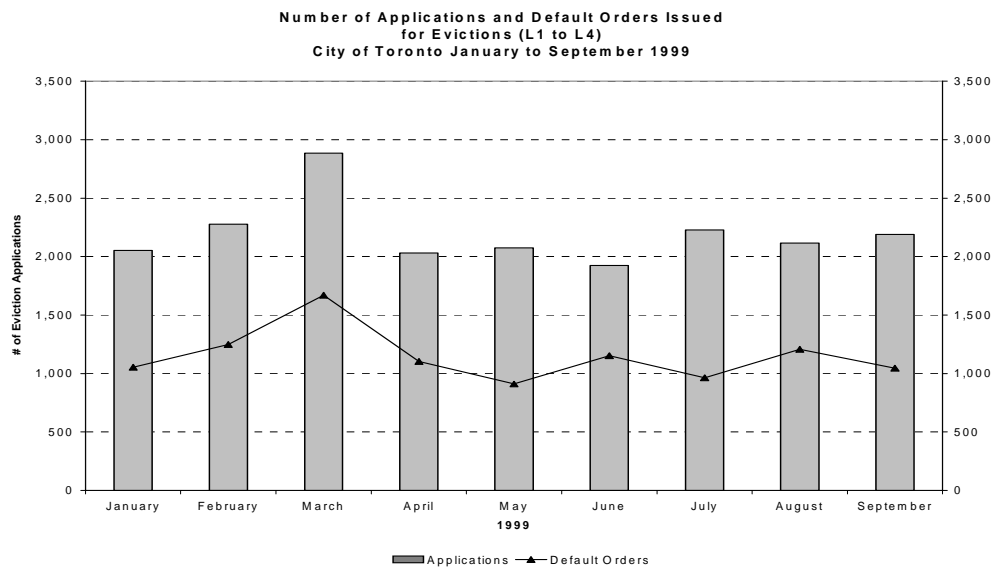
As the above guideline increase applications are affecting a large number of tenants, staff are attempting to obtain an in-depth understanding of the issues through a request to the Tribunal to provide building specific data, including address of the building where the application was filed, number of units affected, current rents, reason for the application, first effective day for the increase, amount of increase ordered and reason for the order.

(2) Evictions:

In addition to above guideline increase applications, the issue of evictions is also a growing concern. In Toronto, in the 15-month period between June 18, 1998, and September 30, 1999, a total of 31,989 applications for termination of tenancy have been filed by landlords, equivalent to an average of 2,132 applications per month. (These include landlords' applications for terminations based on the following grounds: non-payment of rent (L1); illegal act, impaired safety, undue damage, persistent late payment of rents, interference with other's reasonable enjoyment, landlord's personal use of the unit, demolition, conversion, renovations and repairs (L2); tenant's notice to terminate (L3); and tenant's breach of conditions in a prior settlement

order by the Tribunal (L4.) This is an increase of 20 percent over the monthly average filed in 1997 (1,775).

While data about the total number of eviction orders issued in this period is not yet available from the Tribunal, the increase in applications may indicate a trend of potential increase in the number of tenants being evicted. At least from the data available, almost one-half (15,630) of these applications in Toronto did not go to a hearing and thus resulted in a default order to evict the tenant. This is due to the fact that under the new legislation, there is no hearing held if the tenant has not filed a dispute in writing within five calendar days of receiving a notice of hearing from the landlord. Many tenants are unable to submit a written dispute because they are not aware of this requirement, or they know it too late to do so, while others believe they cannot dispute the application because it is true that they have not paid their rent. Community organizations assisting tenants have reported a heightened sense of hopelessness and frustration



among tenants facing the risk of eviction because of the short timeline for dispute and because of the difficulty in seeking other affordable accommodation at a time of low rental vacancy rate and high rents charged for vacant units.

The high percentage of default orders means that in a given month, at least about 1,000 tenant households in Toronto have been evicted from their homes. When the outcome of the other half of applications which have been resolved through a hearing is taken into account, the number of actual evictions could be even much higher, affecting more households. In order to develop strategies to prevent evictions, staff are attempting to obtain an accurate picture of the magnitude of the problem. Staff have requested data from the Tribunal in terms of a detailed breakdown of the grounds for eviction, applications that resulted in a default order, and those that resulted in an eviction order.

(3) Demolitions and Conversions:

While eviction is a serious concern, conversion to condominium, extensive renovations and demolitions may also affect tenants' security of tenure. The TPA has repealed the Rental Housing Protection Act which controlled conversions and demolitions of rental housing. Although the City has attempted to restrict conversions and demolitions through an amendment to its Official Plan, this amendment was recently challenged by several building owners and struck down by the Ontario Municipal Board. Therefore, strategies that prevent evictions should include an assessment of the impact of the new law on condominium conversions and demolitions, to see if there is an increase of such activities and if evictions are increased as a result of these activities. For this purpose, a data request has also been made for applications for conversion, renovations and demolition, including specific addresses of the properties, number of units affected and outcome of the applications.

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(Communication dated October 6, 1999, addressed to  
the Community Services Committee from the City Clerk)

The Planning and Transportation Committee at its meeting on October 4, 1999:

- (1) endorsed the following action taken by the Toronto Community Council at its meeting on September 13, 1999, with respect to the Tenant Defence Fund:

“The Toronto Community Council:

- (1) endorsed the recommendations for a Tenant Defence Fund presented to the Planning and Transportation Committee, at its meeting held on September 13, 1999; and
- (2) supported the recommendations of the Sub-Committee to Restore Rent Control, including its request for a meeting with the Honourable Steven Gilchrist, Minister of Municipal Affairs and Housing.”;

and forwarded notice of its endorsement in this respect to the November 4, 1999, meeting of the Community Services Committee; and

- (2) forwarded the action taken by the Toronto Community Council, as outlined above, to the other Community Councils with a request that they consider this matter and provide comment back to the Community Services Committee.

For the information of the Community Services Committee and Community Councils, the Planning and Transportation Committee reports also having:

- (1) requested the Commissioner, Community and Neighbourhood Services to report to the November 4, 1999, Community Services Committee meeting and to the next meeting of the Sub-Committee to Save Rent Control:
  - (a) on the feasibility of funding the Tenant Defence Fund using one-fifth of 1 percent of all taxes paid by rental buildings in the City of Toronto; and
  - (b) an indication of the tenant groups which are currently in need of experienced assistance by the City;
- (2) received the report (September 20, 1999) from the Commissioner, Community and Neighbourhood Services for information; and
- (3) recommended to Council, for its meeting on October 26, 1999, that:
  - (a) the Acting Commissioner, Urban Planning and Development Services and/or the Commissioner, Community and Neighbourhood Services be authorized to request the Ontario Rental Housing Tribunal for adjournments for tenants where they feel it is essential; and
  - (b) the Acting Commissioner, Urban Planning and Development Services be requested to conduct a comprehensive property standards inspection of 521 and 523 Finch Avenue West and co-ordinate inspection of unit interiors through the tenants' associations.

Background:

The Planning and Transportation Committee at its meeting on October 4, 1999, gave consideration to the attached report (September 20, 1999) from the Commissioner of Community and Neighbourhood Services responding to the Committee's request that staff provide a review of the proposed Tenant Defence Fund for the October 4, 1999; meeting; informing the Committee of work that is already underway to define the City's role in providing information and support services to tenants that is directly relevant to this request; advising that a report will be forthcoming to the November meeting of Community Services Committee; and recommending that this report be received for information.

The Committee also had before it the following reports/communications:

- (September 20, 1999) from the City Clerk, Toronto Community Council;
- (October 4, 1999) motion from Councillor Walker;
- (October 4, 1999) from Brad Butt, Executive Director, Greater Toronto Apartment Association;

- (October 4, 1999) from Harry Hakomaki, Building and Concrete Restoration Association of Ontario;
- (October 4, 1999) from Rosala Robbins;
- (October 4, 1999) from Anne Ritchie, Chair, Tenants' Association
- (October 1, 1999) from Brook Physick, Community Legal Worker, Flemingdon Community Legal Services; and
- (October 4, 1999) from Peter Gabor, Chair, Board of Trade Planning and Development Committee.

The following persons appeared before the Planning and Transportation Committee in connection with the foregoing matter:

- Brad Butt, Executive Director, Greater Toronto Apartment Association;
- Harry Hakomaki, Building and Concrete Restoration Association of Ontario;
- Grant Cowan;
- Dale Ritch;
- Roslyn Oslender;
- Mary Hopkins;
- Paul Yash;
- Abbas Kolia, Thorncliffe Park Tenants Association;
- Anne Ritchie, Chair, 111 Davisville Tenants Committee;
- Nessa Kouchuer;
- Rosala Robbins
- Councillor Walker; and
- Councillor Korwin-Kuczynski.

The Committee's action is as noted above.

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(Communication dated September 20, 1999, addressed to the  
Planning and Transportation Committee, from the  
City Clerk, Toronto Community Council)

Community Council's Actions:

The Toronto Community Council advises the Planning and Transportation Committee that it:

- (1) endorses the recommendations for a Tenant Defence Fund presented to the Planning and Transportation Committee, at its meeting held on September 13, 1999; and
- (2) supports the recommendations of the Sub-Committee to Restore Rent Control, including its request for a meeting with the Honourable Steven Gilchrist, Minister of Municipal Affairs and Housing.

Background:

The Toronto Community Council, on September 14, 1999, had before it a report (April 13, 1999) from the City Solicitor submitting draft zoning by-law respecting No. 103 West Lodge Avenue (High Park).

The Toronto Community Council also had before it the following reports/communications:

- (May 7, 1999) from the Commissioner of Urban Planning and Development Services - Final Report on Application No. 197024 To Amend Site Specific By-law 22037 To Permit A Reduction In The Number of Parking Spaces Required For 103-105 West Lodge Avenue;
- (May 13, 1999) from Ms. Anna Thacker;
- (May 21, 1999) from Ms. Marian Y. MacGregor, Parkdale Community Legal Services Inc.;
- (Undated) from Ms. Ann-Marie Rechier;
- (May 25, 1999) from A. Lynch;
- (May 24, 1999) Petition with 31 signatures in opposition;
- (April 26, 1999) from Mr. Robert B. Levitt obo the Parkdale Tenants' Association;
- (Undated) from Ms. Shirley Woods;
- (Undated) from Ms. Anna C. Thaker;
- (Undated) - 139 Identical Letters in opposition;
- (June 3, 1999) from the City Clerk, Toronto Community Council, forwarding the Community Council's actions of May 26 and 27, 1999;
- (September 10, 1999) from Mr. Anthony Lynch;
- (September 12, 1999) from Mr. John Dorion;
- (September 13, 1999) from Acting Commissioner of Urban Planning and Development Services;
- (September 14, 1999) from Mr. Marko Lavrisa;
- (September 13, 1999) Petition signed by 72 persons;

- (September 13, 1999) Petition signed by 75 persons;
- (September 14, 1999) from Councillor Chris Korwin-Kuczynski and Councillor David Miller;
- (September 12, 1999) from Mr. Vilko Zbogar;
- (September 14, 1999) from Ms. Anna C. Thaker;
- (September 14, 1999) from Dr. Harpreet Singh Chaggar; and
- (July 30, 1999) from Ms. Sookranie Lucknauth.

Notice of the public meeting was given in accordance with the Planning Act. The public meeting was held on May 26, 1999, and September 14, 1999, and the following addressed the Toronto Community Council:

On May 26, 1999:

- Mr. Vilko Zbogar, Parkdale Community Legal Services;
- Mr. Bart Poesiat, Common Front in Defence of Poor Neighbourhoods;
- Mr. Bob Levitt, Parkdale Tenants' Association;
- Dr. Harpreet Chaggar;
- Mr. Suk Tumsee;
- Mr. A. Lynch;
- Ms. Anna Thaker, Westlodge Tenant Association;
- Mr. David Drake, EMC Group Ltd.;
- Ms. Daramdeo Sukdeo; and
- Mr. Paul Wynn;

On September 14, 1999:

- Mr. Paul Wynn, Trustee;
- Mr. Jeff Wynn, Property Manager;
- Mr. Bart Poesiat, Parkdale Community Legal Services;
- Mr. Vilko Zbogar, Toronto, Ontario;
- Ms. Shirley Woods, West Lodge Tenants' Association;
- Ms. Marian MacGregor, Parkdale Community Legal Services;
- Ms. Anna C. Thaker, Parkdale Tenants' Association;
- Ms. Sookranie Lucknaut, Toronto, Ontario;
- Dr. Harpreet Chaggar, Audiologist;
- Mr. Chris Wilsack, Toronto, Ontario;
- Mr. John Connor, West Lodge Tenants' Association;
- Ms. Desiree Rose, Jameson Tenant Association;
- Mr. Jeff Phillips, Phillips Consultant;
- Ms. Kham Nguyen, Toronto, Ontario;



- Mr. Marko Lavrisa, Levitt-Goodman Architect Association;
- Ms. Thu Nguyen, Statistics Canada;
- Ms. Evelyn Simpson, Toronto, Ontario;
- Mr. Ngoc Le, Toronto, Ontario;
- Mr. Peter Romanov, Toronto, Ontario; and
- Mr. Karuna Karan, Toronto, Ontario.

The Toronto Community Council recommended to City Council for its meeting to be held on September 28, 1999, that:

- (1) City Council not approve the draft by-law appended to the report (April 13, 1999) from the City Solicitor;
- (2) the Director, Municipal Standards and Licensing be requested to withhold approval of any remaining outstanding orders until the meeting with Parkdale Community Legal Services and representatives of the West Lodge Tenants' Association occurs, and issues resolved (as requested by the Toronto Community Council), provided that such meeting is held on an expedited basis; and
- (3) the Director, Municipal Standards and Licensing and the Deputy Chief Building Official ensure that work orders are in 100 percent compliance before they are cleared.

The Toronto Community Council also:

- (1) invited the Director of Parkdale Community Legal Services and representatives of the West Lodge Tenants' Association to meet with the Deputy Chief Building Official and the Director, Municipal Standards and Licensing to review all building standard and building code issues that are of concern to the tenants and their representatives;
- (2) referred the following communications to the Deputy Chief Building Official, the Director, Municipal Standards and Licensing and the City Solicitor:
  - (September 14, 1999) from Mr. Marko Lavrisa;
  - (September 12, 1999) from Mr. Vilko Zbogar; and
  - (September 14, 1999) from Dr. Harpreet Singh Chaggar.

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(Communication dated October 14, 1999, addressed to the  
Community Services Committee, from the City Clerk)

The Etobicoke Community Council at its meeting held on October 13, 1999, advised the Community Services Committee that it supports the concept of the establishment of a Tenant Defence Fund, subject to the report from the Commissioner, Community and Neighbourhood Services, requested by the Planning and Transportation Committee on October 4, 1999.

Background:

The Etobicoke Community Council had before it a communication (October 6, 1999) from the City Clerk, advising that the Planning and Transportation Committee on October 4, 1999, amongst other things:

- (1) endorsed the action taken by the Toronto Community Council on September 14, 1999, with respect to the Tenant Defence Fund, viz.:

“The Toronto Community Council:

- (a) endorsed the recommendations for a Tenant Defence Fund presented to the Planning and Transportation Committee at its meeting held on September 13, 1999;
- (b) supported the recommendations of the Sub-Committee to Restore Rent Control, including its request for a meeting with The Honourable Steven Gilchrist, Minister of Municipal Affairs and Housing.”;

and directed that notice of its endorsement be forwarded to the November 4, 1999, meeting of the Community Services Committee; and

- (2) forwarded the action taken by the Toronto Community Council to the other Community Councils with a request that they consider this matter and provide comment back to the Community Services Committee.

(Report dated November 3, 1999, addressed to the  
Community Services Committee, from the  
Commissioner of Community and Neighbourhood Services)

Purpose:

To provide information on Council’s ability to delegate granting power, in the event that Council decides to establish a Tenant Defence Fund as proposed by the Sub-Committee to Restore Rent Control.

Financial Implications:

The financial implications of the proposed Tenant Defence Fund are addressed in a separate report.

Recommendation:

It is recommended that this report be received for information.

### Council Reference:

On October 31, 1999, an informal meeting (quorum was not attained) of the Sub-Committee to Restore Rent Control considered the matter of implementation of a Tenant Defence Fund. The recommendations of the Councillors at this meeting are being forwarded to your Committee via a communication from Councillor Walker. Staff were also asked to provide a further report to the Community Services Committee on how the granting process for a Tenant Defence Fund might work.

### Background:

Since October 31, 1999, staff have sought and obtained advice from the City Solicitor on Council's ability to delegate granting authority to staff or to the Subcommittee to Restore Rent Control.

### Discussion:

#### City Solicitor's Opinion:

The City Solicitor advises that grants must be approved by City Council and cannot be delegated to a committee or to staff unless such delegation is merely administrative in nature.

Section 113 of the *Municipal Act* allows a municipality to make grants "on such terms and conditions as to security and otherwise as the council may consider expedient, to any person, institution, association, group or body of any kind ... for any purpose that, in the opinion of the council, is in the interests of the municipality."

The language in section 113 specifically requires that a determination as to whether a grant is expedient and in the best interests of the municipality must be made by Council. Thus, the discretionary, decision-making power to make grants cannot be delegated by Council either to staff, the Sub-Committee to Restore Rent Control (the "Sub-Committee"), or any other committee of Council.

An approval of grants by the Sub-Committee would constitute such an illegal delegation of Council's grant-making power. While subsequent ratification by Council of such a decision may correct the problem, Council must remain free to make its own decision as to whether the grant should be awarded. Thus, there would be no means of insuring that Council would subsequently approve the grant initially approved by the Sub-Committee. An arrangement whereby Council merely "rubber-stamped" the Sub-Committee's actions would involve a fettering of Council's discretion and would constitute an illegal delegation of that discretion to the Sub-Committee.

However, should Council approve a grants program to tenant associations opposing "above-guideline" rent increase applications, approve clear, concise criteria for assessing the tenant associations applying for such grants on a first-come, first-served basis, and by by-law delegate the assessment of such applications using the approved criteria to a committee or to staff, it is arguable that a mere administrative function would be delegated and that Council

would have exercised its discretionary decision-making power under section 113 in establishing the criteria.

For such a delegation to be merely administrative in nature, the grant criteria approved by Council must include all discretionary policy decisions, leaving only the administration of the policy to the Sub-Committee or to staff. Such criteria should include the amount of grant each organization is eligible to receive, detailed criteria for assessing whether the City has an interest in the application being opposed, and administrative requirements which each association must meet. With reference to the grant criteria recommended by the Sub-Committee, Council should approve threshold details such as a minimum acceptable number of tenants affected by the application, a definition of “low/moderate income tenants” using maximum income amounts, a minimum acceptable rent increase being sought by the landlord, a maximum acceptable rent amount being charged prior to the increase, clarification of what is meant by a “precedent for future Tribunal decisions”, and clarification of the nature of the documentary evidence required of “inflated billing, shoddy work and/or inaccuracy on the landlord’s application”.

Furthermore, no authority exists for Council to delegate its powers other than to a committee of Council or to City staff. Council could not approve a grant in the full Fund amount of \$300,000.00 to the organization who is successful in the RFP process so that the organization would then allocate the \$100,000.00 directly to tenant associations opposing “above-guideline rent increase” applications. Even if such an arrangement could be structured to be a mere delegation of administrative power, section 102.1 of the *Municipal Act* restricts such delegations to “officers of the municipality or committees of council.”

#### Conclusion:

#### Implications of City Solicitor’s Opinion:

Should Council decide to establish a Tenant Defence Fund, as proposed by the Sub-Committee to Restore Rent Control, the following are the options for approving grants to tenant associations:

- (1) Council approves grants to tenant associations, based on recommendations from a committee of Council or staff. The criteria already identified by the Sub-Committee and staff could provide guidance in inviting such grant applications and making recommendations to Council.
- (2) Council approves clear, concise criteria for assessing the tenant associations applying for grants and delegates the administrative power to issue such grants to a committee of Council or to staff. The criteria for such grants would need to be more clear than those proposed to date by the Sub-Committee and staff, and grants must be approved on a first-come, first-served basis.

#### Contact Name:

Joanne Campbell, General Manager, Shelter, Housing & Support, Tel: 392-7885/Fax: 392-0548.

**The Policy and Finance Committee also submits the following communication (November 9, 1999) from the City Clerk:**

Recommendation:

The North York Community Council on November 9, 1999, since it did not have an opportunity to submit its comments to the Community Services Committee for its meeting held on November 4, 1999, recommended to the Policy and Finance Committee the establishment of the Tenant Defence Fund.

The North York Community Council also reports for the information of the Policy and Finance Committee and Council having requested the City Solicitor to report directly to City Council for its meeting scheduled for November 23, 1999, on the City's ability to advise Revenue Canada of above-guideline increases by landlords.

Background:

The North York Community Council had before it a communication (October 6, 1999) from the City Clerk, Planning and Transportation Committee, forwarding the action taken by the Toronto Community Council as outlined in the aforementioned communication, with the request that other Community Councils consider the matter and provide comments to the Community Services Committee.

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The Policy and Finance Committee also had before it the following reports and communications which were forwarded to all Members of Council with the November 10, 1999, agenda of the Policy and Finance Committee and copies thereof are also on file in the office of the City Clerk:

- (i) (September 20, 1999) from the Commissioner of Community and Neighbourhood Services, addressed to the Planning and Transportation Committee entitled, "Tenant Defence Fund: Options for Tenant Information and Support Services";
  - (ii) Various attachments to the report dated November 3, 1999, addressed to the Community Services Committee from the Commissioner of Community and Neighbourhood Services entitled, "Grants to Tenant Associations from the Proposed Tenant Defence Fund";
  - (iii) (November 3, 1999) from Ms. Anna Maria Recine-Pynn, responding to the issue of the Tenant Defence Fund; and
  - (iv) (November 9, 1999) from Ms. Anna Maria Recine-Pynn, forwarding a revised submission respecting the Tenant Defence Fund issue.
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The following persons appeared before the Policy and Finance Committee in connection with the foregoing matter:

- Mr. Brad Butt, Executive Director, Greater Toronto Apartment Association, and filed a written submission in regard thereto;
- Mr. Mel Brown, Brown Management Services;
- Mr. John Mallovy, Vice President, Construction and Engineering, Greenwin Property Management;
- Mr. Harry Hakomaki, Past President, Building and Concrete Restoration Association of Ontario, and filed a written submission in regard thereto;
- Mr. Dale Ritch;
- Mr. Paul York, Greater Toronto Tenant Associations, and filed a written submission in regard thereto;
- Ms. Janet McLeod, Volunteer Member, Greater Toronto Tenant Associations;
- Mr. Abbas Kolia, Thorncliffe Park Tenants Coalition; and
- Mr. Vance Latchford.

The following Members of Council also appeared before the Policy and Finance Committee in connection with the foregoing matter:

- Councillor Doug Holyday, Markland Centennial;
- Councillor Chris Korwin-Kuczynski, High Park;
- Councillor Jack Layton, Don River;
- Councillor Jane Pitfield; East York; and
- Councillor Michael Walker, North Toronto.

*(City Council on November 23, 24 and 25, 1999, had before it, during consideration of the foregoing Clause, the following joint report (November 22, 1999) from the Commissioner of Community and Neighbourhood Services and the Chief Financial Officer and Treasurer:*

*Purpose:*

*To respond to requests by the Policy and Finance Committee for further information on:*

- ways to expand tenant information and advisory services funded by the City;*
- the ability of Legal Aid Ontario to deal with tenant concerns; and*
- how to ensure the Ontario Rental Housing Tribunal is making proper decisions.*

*Financial Implications:*

*The actions outlined in this report to increase support for tenants would result in increased annual costs of \$202,490 (in addition to existing funding of \$97,510 for the tenant hotline). The financial impact in the 2000 Operating Budget would be \$106,250 for establishment of a Rental Housing Office and \$38,745 for additional Tenant Hotline funding (partial year impacts). The financial impact in the 2001 operating budget would be an additional \$38,745 to realise full year impact of Tenant Hotline funding and \$18,750 for full year impact of the Rental Housing Office.*

*Recommendations:*

*It is recommended that:*

- 1. a) Council endorse the decisions made by Legal Aid Ontario on November 17 to:*
  - create a province-wide Housing Specialty Clinic with focus on test cases, law reform and advocacy;*
  - provide permanent funding to Tenant Duty Counsel (TDC) and better coverage in Toronto by increasing in the number of TDCs from 4 to 6; and*
  - eliminate current geographic gaps in Toronto's community legal clinic system.*
- b) Council write to the Chair of Legal Aid Ontario to commend the Legal Aid Board for taking these actions and request that they be implemented as quickly as possible.*
- 2. Council take action to support tenants by:*
  - a) Establishing a Rental Housing Office, at a cost of up to \$106,250 in 2000 and an incremental cost of \$18,750 in 2001;*
    - establish and support a community-based tenant services network (consisting of legal clinics, housing help centres, and other tenant service organizations);*
    - create and maintain a tenant services website;*
    - monitor and report on Ontario Rental Housing Tribunal activity, and rental market and eviction trends;*

- develop “tenant-friendly” information materials and workshops on the Tenant Protection Act and services available to tenants;
  - manage the existing rent reduction/property tax notification program for tenants and landlords; and
  - provide educational programs and advisory services for small landlords.
- b) allocating \$175,000 per year (increased from the current \$97,510), through an RFP process, to a new tenant hotline service as recommended in the staff report entitled “Review of the Tenant Hotline Service” (October 21, 1999). The impact in 2000 is \$38,745, with a further incremental impact of \$38,745 in 2001.
3. That this report be forwarded to the Policy and Finance Committee and the Budget Advisory Committee as per the “Financial Control Protocols within the Revised Council-Committee Structure” which was adopted by Council.
4. The appropriate City officials be authorized to take the necessary action to give effect to these recommendations.

Background:

*Introduction*

*At recent meetings, the Planning and Transportation, Community Services and Policy and Finance Committees have heard deputations from tenant representatives urging the City to take action on concerns related to the Tenant Protection Act and the Ontario Rental Housing Tribunal. While little summary data is available, it is clear that many tenants are being impacted by the legislation through rent increases and evictions and many require assistance.*

*The question that Council must consider is: “What is the most appropriate role for the City”. Three possible roles are described below, ranging from direct support for individual tenants associations through a Tenant Defence Fund to broader support for the tenant sector through advocacy and enhanced advisory services. The advice of staff, as outlined in this and previous reports, is that the City should provide support for the tenant sector as a whole through information and advisory services rather than through direct support related to tenant representation. As noted later in this report, Legal Aid Ontario is taking certain actions to increase assistance to tenants and Council should endorse these actions.*

*1. Direct Support for Tenant Organizing and Representation*

*The Subcommittee to Restore Rent Control has proposed a Tenant Defence Fund of \$300,000 which would provide technical expertise and grants to tenants associations disputing rent increases at the Ontario Rental Housing Tribunal. The proposal was supported in principle by the Community Services Committee on November 4<sup>th</sup>, but not supported by the Policy and Finance Committee on November 10.*



## 2. *Advocacy for Action by the Province and Legal Aid*

*The Community Services Committee also supported other actions to deal with tenant concerns, which will be considered by Council on November 23<sup>rd</sup> (staff report titled “Review of Information and Advisory Services to Tenants and Landlords”). These included:*

- *requesting the Province to improve the information and notices provided by the Ontario Rental Housing Tribunal; and*
- *endorsing of improvements to the Legal Aid system (e.g. creation of a speciality tenants legal clinic, more and permanent Tenant Duty Counsel, etc.).*

*This report addresses further questions posed by the Policy and Finance Committee, namely a) whether the City can take steps to ensure the Province’s Tribunal is making proper decisions and b) the ability of legal aid clinics to deal with concerns raised by tenants.*

## 3. *Enhancement of City-Funded Information and Advisory Services*

*The Committee also considered two consulting reviews of tenant/landlord services in the City and the City-funded tenant hotline operated by the Federation of Metro Tenants Associations (in staff reports titled “Review of Information and Advisory Services to Tenants and Landlords” and “Review of the Tenant Hotline Service”). The actions being recommended to Council are: an expanded tenant hotline service to be funded through an RFP process; and a stronger role for the City in providing and coordinating information and advisory services to tenants.*

*The suggestions below for expanded City action are based largely on the specific recommendations provided by the consultants in these reviews.*

### *Requests by the Policy and Finance Committee*

*At its meeting of November 10, 1999, the Policy and Finance Committee considered a communication from the Community Services Committee proposing establishment of a Tenant Defence Fund. Among other actions, the Committee recommended that the communication be received, and asked staff to report on the following:*

- *an expanded tenant advice and information service funded by the City to further assist tenants in Toronto;*
- *the ability of legal aid clinics to address the issues raised in the report (October 21, 1999) from the Commissioner of Community and Neighbourhood Services and by deputants appearing at the meeting of the Policy and Finance Committee on November 10, 1999; and*
- *a mechanism whereby the City can force the Province, if such is the case, to ensure that the Ontario Rental Housing Tribunal is discharging its duties in a proper manner.*

Discussion:

1. Expansion of City-Funded Information and Advisory Services

*The following actions would expand the information and advisory services provided to tenants by the City either directly or indirectly through community agencies.*

*Expanded Tenant Hotline Service*

*Suggested Enhancement:*

*In a report entitled “Review of the Tenant Hotline Service”, which will be considered by Council on November 23, staff have proposed that steps be taken to enhance this service. An existing tenant hotline service is provided by the Federation of Metro Tenants’ Associations, with annual funding of \$97,510 from the City. Based on a review of the service by a consultant and the City Auditor, staff have recommended that a request for proposals be issued for a new hotline based on specific service standards (i.e. operation seven days per week, multiple language translation, after hours call return, ongoing training for counsellors, and client satisfaction measures).*

*Resource Requirements:*

*In order to expand the service to meet the higher service standards, the funding should be increased on an annual basis from \$97, 510 to \$175,000. As the new service would not commence until July 1, 2000 (following an RFP process), the increase would be \$38,745 in the 2000 Budget (for 6 months of operation) and a further \$38,745 in the 2001 Budget.*

*Support for a Community-Based Tenant Services Network*

*Suggested Enhancement:*

*We have recently completed a review and inventory of community agencies providing assistance to tenants in accessing and maintaining housing in the private rental market. The consultants have proposed that the City take the following specific actions to coordinate and increase the capacity of these agencies.*

- a) establishing and supporting a tenant services network, consisting of representatives of community-based tenant services (including legal clinics, housing help centres, tenant organizations, etc.);*
- b) developing and maintaining a tenant services website;*
- c) monitoring and analyzing rental market trends, particularly Tribunal activity and eviction trends; and*
- d) developing a user-friendly overview of the TPA and maintaining an inventory of services available to tenants; and*

*The review also identified a gap in information services for small landlords which should be addressed; the review suggests that the City build on existing educational programs and advisory services for small landlords through agencies such as the Landlord Self-Help Clinic.*

*To provide a focus and coordination for these activities, a Rental Housing Office should be established. The Shelter, Housing and Support Division will develop a structure and detailed budget for this activity, including appropriate staffing and purchase of service funding.*

#### *Resource Requirements:*

*This represents a significant expansion of existing City activity. To date the most significant related service offered directly by the City has been a program to notify tenants and landlords of rent reductions resulting from property tax changes, led by Finance with support from the Shelter, Housing and Support Division. The Chief Financial Officer and Treasurer will be reporting to Council shortly, suggesting an evaluation of this program, and noting the need for staffing resources to continue the program at a mandatory level in the year 2000. Other tenant-related services funded by the City in 1999 include research and advocacy related to tenant issues, and grants to a number of eviction prevention projects. The City also provides a small annual grant (\$5,000) to the Landlord Self-Help Clinic and provided \$11,000 to the agency in 1999 to develop a pilot second suite education program for small landlords.*

*The additional activities related to coordination of a tenant services network could be led by the Shelter, Housing and Support Division, if additional resources were provided. Such resources should include a combination of purchase of service and staff funding in order to provide flexibility. The activities requiring purchase of service funding include website development and operation and preparation of information materials. Staff should consult with existing coalitions of agencies to determine the most efficient and effective way to provide coordination of services. For example, the community legal clinics already meet regularly to coordinate their efforts, and housing help centres have been meeting informally. Also, it may be more effective and less costly to provide services such as a tenant-oriented website and information materials in partnership or through these groups.*

*The staff within the Rental Housing Office should manage the tenant notification program noted above, in addition to supporting the coordination/provision of tenant services. Staffing resources may be shared with Finance to deliver the tenant notification program in 2000.*

*The total budget for a Rental Housing Office should be established at \$106,250 in the 2000 budget, (partial year impact), with an additional \$18,750 in the 2001 Budget, based on a combination of staffing and purchase of service resources to be defined by Shelter Housing and Support Division in consultation with Finance.*

## *2. Ability of Legal Aid to Respond to Tenant Concerns*

*I was also requested by the Policy and Finance Committee to comment on the ability of legal clinics to address the issues affecting tenants which were raised in staff reports and by deputants to the Policy and Finance Committee.*

## *Role and History of Legal Aid*

*Legal Aid Ontario is a provincial government agency which allocates funding for legal services to low-income tenants and sets the income criteria for eligibility for receiving legal aid. Funding is provided through two streams: (a) the clinic system including community legal clinics, specialty clinics and Tenant Duty Counsels, and (b) the certificate program which funds private lawyers for representing tenants. The vast majority of representation for landlord-tenant disputes is currently carried out by staff lawyers from community legal clinics; only a small portion of representation is carried out by private lawyers through Legal Aid Certificates.*

*There are 16 community legal clinics located in the City to provide legal services to low-income tenants. In recent years, the Provincial Government has significantly decreased its funding to organizations providing information, advice and representation to tenants, and the funding for community legal clinics has been flat-lined. Due to limited resources, most clinics focus on representing tenants on eviction issues as the most important priority. As discussed in the report on Review of Information and Advisory Services to Tenants and Landlords, we are recommending to Legal Aid Ontario that a higher priority be placed on assisting tenants in disputing applications for above-guideline rent increases.*

*Historically there was a specialty tenant clinic (Metro Tenant Legal Services) serving low-income tenants in Metro Toronto but it was disbanded in 1996, leaving a major gap in the clinic system resulting in increased demands for legal assistance experienced by the 16 community legal clinics in Toronto. Clearly, there is a need to create a new tenant clinic to represent tenants on test cases, conduct research and advocate reforms in tenant laws.*

*In October 1998, Legal Aid Ontario launched a 6-month pilot project providing the service of Tenant Duty Counsels at Tribunal offices in 5 Ontario cities (Toronto, London, Hamilton, Mississauga, and Ottawa). In Toronto, a total of 4 Tenant Duty Counsels were assigned to the three Tribunal office - two at Toronto South, and one at each of the Toronto North and Toronto East offices. Their chief mandate is to provide advice to tenants on the day of their hearings at the Tribunal, on matters such as evictions, repairs, rent increases and other tenants' rights, with a relatively minor role in representing tenants on limited issues or urgent matters such as set-aside motions. They sometimes mediate and negotiate with landlords on behalf of tenants for a settlement and have the settlements made into Tribunal orders. The pilot project was supposed to finish on March 31, 1999, but it was renewed on a month to month basis until a final decision on its future would be made by the Board of Legal Aid Ontario.*

## *Status of Current Proposals to Expand Legal Aid*

*In the fall of 1999, Legal Aid Ontario considered expanding the clinic system to improve its information/advisory, advocacy and representation services to tenants. The improvements under consideration included:*

- 1) creation of a province-wide Housing Specialty Clinic with focus on test cases, law reform and advocacy while providing summary advice and training to community agencies in tenant laws;*

- 2) provision of permanent funding to the Tenant Duty Counsel (TDC) project and better coverage of services in Toronto by increasing in the number of TDCs from 4 to 6; and possible extension of the service to other major cities in the province;
- 3) coverage for the current geographic gaps in Toronto's clinic system, including central part of Toronto and the area currently served by the Downtown Legal Services student clinic; and
- 4) expansion of the clinic's role to allow representation on issues of disputing rent increases and condominium conversions making above-guideline rent increase applications. As indicated above, legal clinic services currently tend to place more emphasis on addressing eviction issues because of limited resources; an increase in funding would allow low-income tenants to acquire legal representation by way of a legal certificate to retain a private lawyer.

*In addition to providing advice, representation and mediation services, the role of the Tenant Duty Counsel has incorporated collection of service statistics, observation of activities and proceedings at the Tribunal hearings, and tracking the outcome of the cases where the Tenant Duty Counsel has been involved, such as negotiation for a settlement or request for a set aside motion. Staff will explore with Legal Aid about the possibility of coordinating the Tenant Duty Counsel's work with a tribunal watch program as discussed in the following section to achieve more comprehensive monitoring and evaluation.*

*The Legal Aid Board, at its meeting on November 17, considered the above proposal and approved the implementation of items No. 1, 2 and 3. In addition, the Board approved funding for a province-wide Legal Aid hotline (with a toll-free telephone number) to provide information and summary advice, including landlord-tenant issues and directory assistance for local clinics. All the improvements will be funded from Legal Aid's existing budget and detailed plans of each improvement will be expected to take considerable time to develop.*

*Staff were informed that Item No. 4 (regarding more representation for above-guideline rent increase applications) was not discussed at the Legal Aid Board meeting, as the Board considered that setting priority is within the jurisdiction of the individual community legal clinics based on their local experiences and resources, rather than the jurisdiction of the Legal Aid Board. Nonetheless, there would be an opportunity for the City to provide input through a consultation process as Legal Aid is developing their improvement plans.*

### *3. Enforcing Proper Decision-Making by the Ontario Rental Housing Tribunal*

*Finally, staff were asked to report on steps that that City could take to ensure that the Tribunal is discharging its duties properly. The following has been prepared with the advice of City Legal staff.*

#### *Role of the Ontario Rental Housing Tribunal*

*The Ontario Rental Housing Tribunal is established by the Tenant Protection Act (TPA) and has exclusive jurisdiction to determine all applications under the TPA and all matters in which jurisdiction is conferred on it by the Act. Its members are appointed by the Lieutenant Governor*

*in Council. It has the authority under the TPA to set its own rules of practice and procedure but must make these rules public.*

*The Tribunal has an on-going relationship with the Minister in that it must file an annual report of its affairs with the Minister at the end of each year. The Minister can request further reports and information from time to time and must submit the reports to the Lieutenant Governor in Council and table them with the Legislative Assembly.*

### *Review/Appeal of Decisions*

*The orders of the Tribunal are final and binding and are not subject to review, except in accordance with the Statutory Powers Procedure Act (SPPA). In general, the SPPA allows a Tribunal, if it considers advisable and if its rules deal with the matter, to review all or part of its own decision or order, and to confirm, vary, suspend or cancel the decision or order, within a reasonable time after the decision/order is made. The rules adopted by the Ontario Rental Housing Tribunal provide for such a review. A request for review is permitted under the following circumstances:*

- a) Clerical error - A request can be made to review an order when there are typographic errors or calculation errors in the order. The order can be amended by the adjudicator who issued the original order.*
- b) Errors of fact - This kind of request is permitted when there was no evidence to support the adjudicator's finding or there were errors of fact in the oral presentation or in the documents filed by the landlord or tenant at the hearing. An order containing factual errors will be reviewed by a three-person tribunal including a Vice-Chair responsible for reviews. However, a request for review may be declined if the alleged error is trivial or would not have a material impact on the result.*
- c) Points of law - Any orders that contain bias or prejudice against a party, or mis-application of the law can be appealed to the Provincial Court General Division. The Court may affirm, rescind, amend or replace the decision, or remit the matter to the Tribunal with the judge's opinion. The Tribunal may appeal the Court's decision to a higher court (i.e. Court of Appeal).*

*The request for review or appeal to the Divisional Court may be made by any person affected by an order of the Tribunal, or a party to an order, within 30 days of issuance.*

*Given that appealing to the Court could be time-consuming and costly, an alternative would be to take the complaint to the Ontario Ombudsman Office after the final review of the Tribunal. The purpose of the Ontario Ombudsman is to investigate and resolve public complaints about decisions or actions made by a government Ministry, Board, Agency, Tribunal or Commission. Because the Ombudsman directly reports to the Legislature, he/she is independent of political ties and governmental influences. Tenants could file complaints to the Ombudsman about the final decision after an internal review by the Tribunal has been made when they feel the decision-making process was unfair and improper. After a preliminary investigation, if it were found there is reasonable grounds to proceed, the Ombudsman's office would conduct further investigation and recommend to the Tribunal that they reconsider their decision. It is important*

*to note, though, the Ombudsman does not re-adjudicate the case or change specific points contained in the Tribunal decision. The Ombudsman can only determine whether proper procedure has been followed when the decision was made and recommend to the Tribunal to reconsider its decision if the finding indicates proper procedure has not been followed.*

#### *City Power to Ensure Proper Decision-Making*

*We have been advised by Legal staff that the City has no real power to influence the Tribunal or the Ministry as to the way the Tribunal is conducting its business under the TPA. However, since the Minister is required by the TPA to monitor compliance with the Act and investigate cases of alleged failure to comply, so presumably the City like anyone else, could alert the Minister to concerns it has with respect to the Tribunal's compliance with the Act. Alternatively, the City could justifiably argue that it is a "person affected by an order" or a "party to an order" and appeal a decision of the Tribunal to the Divisional Court on a point of law, but this would require that the Court agree that the City is affected by the Tribunal's order. Similarly, if the City could convince the Tribunal that it is a party to an order or affected by an order, it could attempt to get the Tribunal to review the order.*

#### *Potential Alternative Action*

*Despite the fact that the City has no power over decision-making at the Tribunal, it can take steps to bring to light the nature of decisions made by the Tribunal and advocate for changes to legislation and Tribunal practices and procedures. Many of the recommendations in other staff reports before Council on November 23 represent this type of advocacy.*

*Staff have been attempting to obtain data from the Tribunal for the purpose of monitoring evictions and above-guideline rent increases, but the data provided is limited, costly, and often delayed by 2-3 months. An additional approach would be to create a "tribunal watch" in cooperation with community agencies such as Legal Aid. The purpose of a tribunal watch would be to monitor activity at the three Tribunal offices in Toronto to gather qualitative and quantitative information about applications and orders issued, including those for evictions and above-guideline increase. Working with Tenant Duty Counsel, the legal clinics and other agencies working with tenants, we would gather, and analyze the patterns of, decisions made by adjudicators. Such an analysis could provide evidence of any bias in decision-making and the overall impact of the Tenant Protection Act in terms of actual orders. The analysis can also allow the City to recommend improvements to the Tribunal as part of the enhanced role of the City in information and advisory services. This concept is under discussion with community agencies.*

#### *Conclusion:*

*The suggested activities described in this report would expand the City's role in providing information and advisory services to tenants. These changes, if adopted in principle represent a new annual expenditure of \$202,490, and increase of \$144,995 in the 2000 budget and a further increase of \$57, 495 in the 2001 Budget. This includes staffing resources required to continue*

*the program that notifies tenants and landlords of reduced rents as a result of property tax reduction.*

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*(City Council also had before it, during consideration of the foregoing Clause, the following communication (November 15, 1999) from the City Clerk:*

*The York Community Council on November 9, 1999, endorsed the following action taken by the Toronto Community Council at its meeting on September 13, 1999, with respect to the Tenant Defence Fund, viz:*

*“The Toronto Community Council:*

- (1) endorsed the recommendations for a Tenant Defence Fund presented to the Planning and Transportation Committee, at its meeting held on September 3, 1999; and*
- (2) supported the recommendations of the Sub-Committee to Restore Rent Control, including its request for a meeting with the Honourable Steve Gilchrist, Minister of Municipal Affairs and Housing.”*

Background:

*The York Community Council on November 9, 1999 had before it a transmittal letter (October 6, 1999) from the City Clerk, advising that the Planning and Transportation Committee at its meeting on October 4, 1999:*

- (1) endorsed the following action taken by the Toronto Community Council at its meeting on September 13, 1999 with respect to the Tenant Defence Fund:*

*“The Toronto Community Council:*

- (1) endorsed the recommendations for a Tenant Defence Fund presented to the Planning and Transportation Committee, at its meeting held on September 13, 1999; and*
- (2) supported the recommendations of the Sub-Committee to Restore Rent Control, including its request for a meeting with the Honourable Steven Gilchrist, Minister of Municipal Affairs and Housing.”;*



*and forwarded notice of its endorsement in this respect to the November 4, 1999 meeting of the Community Services Committee; and*

- (2) *forwarded the action taken by the Toronto Community Council, as outlined above, to the other Community Councils with a request that they consider this matter and provide comment back to the Community Services Committee.)*

*(City Council also had before it, during consideration of the foregoing Clause, the following report (November 22, 1999) from the City Solicitor:*

*Purpose:*

*To review the City's ability to advise the Canada Customs and Revenue Agency (the "CCRA"), formerly Revenue Canada, of a landlord's above guideline rent increases under the Tenant Protection Act, 1997.*

*Financial Implications and Impact Statement:*

*If Council determines that the City should provide this information to CCRA, the operating division responsible for providing this information will have to report on the financial implications.*

*Recommendations:*

*It is recommended that Council encourage the Provincial and Federal Governments to enter into an information sharing agreement so that CCRA (Canada Customs and Revenue Agency) will have accurate information.*

*Background:*

*North York Community Council at its meeting held on November 9, 1999 had before it a communication (October 6, 1996) from the City Clerk respecting the "Tenant Defence Fund: Options for Tenant Information and Support Services". Among other actions, the Community Council, "requested the City Solicitor to report directly to City Council for its meeting scheduled for November 23, 1999, on the City's ability to advise Revenue Canada of above guideline increases by landlords".*

*Under the Tenant Protection Act, 1997, and the regulations enacted under it (the "TPA"), a landlord may apply for increases in rent that are above the guideline increases permitted as of right. These applications for increases may be based on the following:*

- 1. An extraordinary increase in the cost for municipal taxes and charges or utilities or both for the whole residential complex.*
- 2. Capital expenditures incurred respecting the residential complex or one or more of the rental units in it.*

3. *Operating costs related to security services provided in respect of the residential complex by persons not employed by the landlord. [s.138(1) TPA]*

*The TPA sets out rules that the Ontario Rental Housing Tribunal (the “Tribunal”) is to apply in considering applications for these types of increases and has detailed interpretation provisions respecting capital and other expenditures.*

*I have been advised that the background to the request for this report was a concern that an expense could be classified as a “capital expenditure” for purposes of the TPA, but classified as a “current” as opposed to “capital expense” in a landlord’s income tax return.*

*Comments:*

*The City does not automatically receive information on above guideline rent increases from the Tribunal. The City has the ability to advise CCRA of above guideline rent increases by landlords, but first must get this information from the Tribunal. The information in the Tribunal’s application files is available for review by the public (including the City). The exception to this public review is any information that has been specifically requested by a party to an application to not be made available for public review under the Freedom of Information and Protection of Privacy Act (for example, for reasons of security).*

*The practical concerns with the City taking a direct role in providing this information to CCRA, in addition to the costs involved, are the usefulness of the information that could be provided to CCRA and CCRA’s actual use of the information provided. These matters are discussed in the following paragraphs.*

*Different Definitions:*

*The definition of what is a “capital expenditure” for purposes of the TPA is not the same as what is considered a “capital expense” under the Income Tax Act. For example, under the TPA a capital expenditure “means an expenditure on a major renovation, repair, replacement or new addition, the expected benefit of which extends for at least one year...”, while the CCRA’s guideline for “Rental Income 1998” notes that “capital expenses usually provide a benefit that usually lasts for several years”.*

*Another difference is the different time frames that may apply to the same expense under the two Acts. For example, income tax returns generally deal with annual expenses, while under the TPA a rent increase may be ordered in respect of a capital expenditure completed during the 18<sup>th</sup> month period ending 90 days before the effective date of the first intended rent increase referred to in the application. [s.22 Ont. Reg. 194/98, TPA]*

*As a result of these differences, there could be cases where a different classification of the same expense is permitted under the two Acts.*

### *Deficiency in the Data:*

*As already noted the City has to get information on above guideline rent increases from the Tribunal. The Tribunal's own records of its orders do not provide the information required to advise CCRA of above guideline rent increases based on capital expenses. City Planning staff had requested certain information from the Tribunal on buildings receiving above guideline rent increases in the City of Toronto. They were advised that information on current rents, increases given, and reasons for increases was not available. They were also advised that information on the reason for the application is available but may not always be reliable.*

*In order to provide information on increases related to a claimed capital expense it may be necessary to analyse the file data. There will still be cases, for example, an application based on different types of expenses, or more than one capital expense), where it may be difficult to determine what part of an increase was the result of a capital expenditure. The Tribunal is specifically charged with not including any unreasonable capital expenditure. While some guidance is provided in the TPA as to what is not an unreasonable expenditure, it may still be difficult to determine what the Tribunal held to be "unreasonable". [ss. 187 & 189 TPA.]*

### *Costs:*

*Tribunal staff had indicated to Planning staff that some of the information requested from the Tribunal's records may be provided free of charge. Any of this information that requires computer programming will be charged at the Tribunal fee of \$60.00 per hour.*

*Tribunal staff have advised that if a non-party member of the public (which would include the City) wants to look at a Tribunal file in order to decide which portions they wish to copy, there is a "looking" fee of \$25 and no time limit on the looking. They also advised that the Tribunal's orders would soon be available on the legal service of Quicklaw. (There is a cost to searching on this system.) Tribunal orders may also be obtained by requesting them from the Tribunal's head office. The cost of the orders is 50 cents per page. A non-party who requests a copy of an application before the Tribunal must pay a fee of \$25 for a copy of the application.*

*If the file number is not known, but only the names of the parties to the hearing or the street address of the property in question, the non-party must make a formal request to view the file or to get a copy of the order or application. The request must be in writing and cite the Freedom of Information and Protection of Privacy Act by name. There is also a special fee of \$5 to receive a copy of the order.*

*There are also the City staff costs of reviewing and summarising the file data.*

### *Use by CCRA:*

*From the above information, it is clear that the type of information the City could provide to CCRA, even after a more detailed review of the file data, may not be very useful in identifying an illegal classification of an expense under either Act. An information officer of CCRA at the Toronto office of business inquiries was contacted regarding this matter. The officer's initial*

*comment was that it is unlikely that CCRA will have any special interest in above guideline rent increases for income tax purposes as this revenue will be treated as conventional rental income. The officer also noted that the only information that they would be interested in would be if a landlord was avoiding paying tax on the landlord's rental income altogether, in which case the City, or anyone else should call the Voluntary Disclosure Line.*

*Option:*

*This classification concern should be reviewed by the Provincial Ministers of Finance and Municipal Affairs and Housing and the Federal Minister of Finance. The City could encourage the Provincial and Federal Governments to enter into an information sharing agreement so that CCRA will have accurate information.*

*Conclusions:*

*The City could advise CCRA of above guideline rent increases, and in particular increases related to capital expenses. However, as set out in this report this would not be a very useful action. The information presently available will probably not be very useful in assisting CCRA in determining if an expense has been classified properly under the Income Tax Act and the initial indication from CCRA staff is that they would not have any special interest in receiving this information. There would be costs to the City if this information is to be provided and the financial implications of providing this information will have to be reported on separately by the operating division providing the information.*

*As set out in the recommendation, it is recommended that Council encourage the Provincial and Federal Governments to enter into an information sharing agreement so that CCRA will have accurate information.*

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*(City Council also had before it, during consideration of the foregoing Clause, two communications (November 22, 1999) and (November 23, 1999) from Mr. Paul York, Greater Toronto Tenant Association, submitting comments regarding the proposed Tenant Defence Fund.)*