



STAFF REPORT ACTION REQUIRED

Request for a Tenant Support Grant from the Tenant Defence Fund for 50 Rosehill Avenue (Ward 22)

Date:	April 23, 2009
To:	Community Development and Recreation Committee
From:	General Manager, Shelter, Support and Housing Administration Division
Wards:	Ward 22
Reference Number:	

SUMMARY

This report responds to the Tenant Defence Sub-Committee's request to assess the feasibility of the City providing a special grant to assist five tenants of a unit at 50 Rosehill Avenue in the defence against their landlord's appeal to the Divisional Court. The appeal arises from a Landlord and Tenant Board ruling that the provision of a common recreational facility was permanently reduced and the tenants were entitled to a rent reduction. The landlord disagrees and has filed an appeal to the Divisional Court.

The City has been requested to provide a grant of up to \$10,000 to help the tenants pay costs, if any, which may be ordered by the Court if the tenants' defence against the landlord's appeal is not successful. This report recommends providing grant of up to \$10,000 to assist the tenants on the basis that it could be precedent setting for tenants where infill development is occurring.

RECOMMENDATIONS

The General Manager, Shelter, Support and Housing Administration, recommends that Council:

1. approve a grant of up to \$10,000 to the Tenants' Association of 50 Rosehill Avenue (Balfour Square) from the 2009 Tenant Support Grants Program to assist the tenants towards any payment of costs which may be awarded against the tenants should the tenant defence against the landlord's appeal not be successful; and

2. authorize the General Manager, Shelter, Support and Housing Administration, to take any actions necessary to implement Council's approval.

Financial Impact

There is no new financial impact. Funds are available within the 2009 approved operating budget for this purpose.

DECISION HISTORY

At its meeting on March 25, the Tenant Defence Sub-Committee considered a request for a Tenant Support Grant for five tenants of a unit at 50 Rosehill Avenue. Staff were requested to report to the Community Development and Recreation Committee for its May 8th meeting "on the feasibility of the City providing a grant from the Tenant Defence Fund to the tenants of 50 Rosehill Avenue to pay the landlord's legal costs should they lose the current Divisional Court appeal by the landlord of the Landlord and Tenant Board Decisions (April 5, 2007 and March 4, 2008) and the Divisional Court awards the legal costs of the landlord against the tenants." A grant of up to \$10,000 was requested.

The request for a staff report was approved by Community Development and Recreation Committee at its meeting of April 16, 2009.

ISSUE BACKGROUND

The property at 50 Rosehill Avenue consists of a 22-storey, 245 unit apartment building with frontages on Rosehill Avenue and on Pleasant Boulevard. The property owner intensified the site by adding 32 new stacked townhouse units on the Pleasant Boulevard frontage in a treed open space. The tenant, Ms. Deng and her family resided in the rental unit facing the piece of land close to where the landlord was constructing the townhouses.

The tenant made an application to the Board for a rent abatement due to the loss of the land where the townhouses were built. That land included a lawn area, trees and walkways with a fence around it which the family used for recreational purposes. The landlord contended that the open space should not be defined as a common recreational facility and there was no reduction in the facility because it still exists. Further, the landlord submitted that there should be no rent reduction as there was no value attached to the land in that the tenants were not paying for the strip of land.

The Board decided that a facility is "something that is built or installed upon to perform some particular function and thus the rear garden, lawns and walkways used by the tenant and her family for recreational purposes were a common recreational facility". In an order made April 5, 2007, it ruled that the provision of a common recreational facility was permanently reduced.

With respect to the request for a rent reduction, the Board noted that the definition of rent includes any consideration paid to the landlord for the right to occupy a rental unit

and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy, whether or not a separate charge is made for those services and facilities. Having found that the area of land was a common recreational facility included in the rent, the Board determined that the rent reduction should be 2.5%, which was a reasonable proportion of the value of the facility.

The landlord disagreed with the Board's ruling and requested a review of the Order. The Review Order was issued on March 4, 2008 and upheld the earlier decision.

On April 2, 2008 the landlord filed an appeal to the Divisional Court. The hearing date has not yet been set.

The Tenants' Association of, 50 Rosehill Avenue (Balfour Square) has provided financial support for the tenants' legal representation at the landlord's request for review hearing and for her defence against the landlord's Divisional Court appeal. So far, they have provided about \$8,000 for this purpose. However, the tenants' association advises that while they can fund the legal costs of defending against the appeal, neither the tenant nor the tenant association has sufficient funds to cover any costs that the Court may award against the tenant should their defence not be successful, such as the legal costs of the landlord.

The tenants' lawyer advised that the outcome of the court appeal could potentially set a precedent and affect a number of other infill housing developments under construction currently in the City, including an intensification site on 330 Spadina Avenue proposed by the same landlord.

COMMENTS

The purpose of the Tenant Support Grants program (Grants Program) is to protect the City's affordable rental housing supply and help tenants maintain their tenancies in affordable rental homes. The implementing by-law (Municipal Code Chapter 797) permits grants for eligible tenant groups to dispute an application to the Ontario Rental Housing Tribunal (now the Landlord and Tenant Board) to increase rents above the guideline in their building, to appeal a Board order on an above guideline application to the Divisional Court or request for a judicial review, or to challenge an appeal or application to the Ontario Municipal Board for demolition or conversion of their building to condominium.

In the case of 50 Rosehill Avenue, the request is for a grant to cover costs that may be awarded against the tenants should they lose their defence. As providing such a grant is outside of the mandate of the Tenant Support Grants Program By-Law, Council approval is necessary.

Staff were requested to report on the feasibility of providing a grant. Upon review, staff recommend providing a grant of up to \$10,000 for the following reasons:

1. The outcome of the Divisional Court appeal may set a precedent for other infill housing developments currently taking place in the City and in the future. For this reason, it is in the City's interest to support the tenant in continuing to defend the Board, rather than having them withdraw on the basis of financial risk.
2. In 2005, Council had provided a grant (\$5,000) for a similar purpose to the Fountainhead Tenants Association for the tenants' application to the Ontario Rental Housing Tribunal for rent abatements due to the loss of use of a swimming pool and some treed lots due to an infill development on site. Therefore, the grant would be consistent with a prior Council decision.
3. The tenants' request is strongly supported by the 50 Rosehill Tenants' Association (Balfour Square), and the Association has provided financial assistance for legal costs of the tenants' defence in this appeal. The City is not being requested to fund the full costs, and through their financial support, the tenants have demonstrated significant commitment to this issue.
4. A key principle of the Tenant Support Grants Program is to help tenants with affordability issues. Generally this is measured by comparing the rents to City wide averages plus 15%, and the rents at 50 Rosehill Avenue are above that benchmark (the tenants' rent is \$1,466, two-bedroom; the benchmark is \$1,270). However, in this situation, financial need arises because the tenants and tenant association have already contributed significant funds for financial costs, and neither can afford to provide further assistance.
5. The Tenant Support Grant program by-law permits staff to approve grants to tenant groups if they make an appeal to the Divisional Court on a Board order or respond to a landlord's appeal to the Divisional Court on a Board order. The maximum amount for such grants is \$10,000. As such, the request for \$10,000 is in keeping with amounts that might otherwise be granted by the City for actions permitted by the by-law.

If the tenants are successful in their defence, grant funds would not be required. If unsuccessful, the Court may decide not to order costs against the tenants. However, if costs are awarded and the grant request is approved, the tenants would be protected from financial risk that they cannot afford.

Staff has no authority to approve grants that would pay the legal costs incurred by the landlord ordered by the Divisional Court. For these grant requests, Council approval is necessary.

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SIGNATURE

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