



STAFF REPORT ACTION REQUIRED

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

Date:	February 25, 2010
To:	Community Development and Recreation Committee
From:	General Manager, Shelter, Support and Housing Administration
Wards:	Ward 22
Reference Number:	

SUMMARY

This report responds to the Tenant Defence Sub-Committee's request to report directly to the March 12, 2010 meeting of the Community Development and Recreation Committee on providing a special grant from the Tenant Defence Fund program to assist five tenants of a unit at 50 Rosehill Avenue in appealing a decision of 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 successfully appealed the decision to the Divisional Court, and the tenants now seek to appeal the Divisional Court decision. Tenants from 330 Spadina Road (Ward 21) are financially supporting the appeal as they have similar concerns about loss of amenity space at their buildings and have made an application to the Landlord and Tenant Board for a rent reduction.

The City has been requested to provide a grant of up to \$5,000 to help the tenants pay costs, if any, which may be ordered by the Court if the tenants appeal is not successful. This report recommends providing grant of up to \$5,000 to the tenants at 50 Rosehill Avenue (Balfour Square) to assist them in their appeal on the basis that the resultant decision may be precedent setting for tenants where infill development is occurring and because both the 30 Rosehill Avenue and 330 Spadina Road tenant associations will be contributing financially.

RECOMMENDATIONS

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

1. approve a grant of up to \$5,000 to the Tenants' Association of 50 Rosehill Avenue (Balfour Square) from the 2010 Tenant Support Grants Program to assist the tenants in their appeal to the Ontario Court of Appeal; and
2. authorize the General Manager, Shelter, Support and Housing Administration, to take necessary actions to implement Council's approval.

Financial Impact

There is no new financial impact. Funds are available within the 2010 proposed operating budget for this purpose.

DECISION HISTORY

At its meeting on March 25, 2009, the Tenant Defence Sub-Committee considered a request for a Tenant Support Grant for five tenants of a unit at 50 Rosehill Avenue and requested staff to report to the Community Development and Recreation Committee "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." Staff recommended a grant of up to \$10,000, which was subsequently approved by Council at its meeting of May 25, 2009.

<http://www.toronto.ca/legdocs/mmis/2009/cd/bgrd/backgroundfile-20752.pdf>

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 tenants at 50 Rosehill Avenue made an application to the Landlord and Tenant Board (LTB) 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 and therefore the rent would be reduced by 2.5%.

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.

The landlord filed an appeal to the Divisional Court. In its order issued October 29, 2009; the Divisional Court ruled in favour of the landlord and dismissed the LTB decision. The Court found that the common space was not a common recreational facility:

The lands surrounding a building, while they may be used for recreation, do not meet the requirement of being built or installed to fulfill that particular function. We accept the Landlord’s submission that these lands are a “necessary incident” to the construction of the building itself. Unless the lands surrounding a building have been specifically landscaped to serve a recreational purpose, by adding a playground for instance, they will not meet the definition of common recreational facility. [p.4]

The decision also noted the section 37 agreement with the City that required the landlord to spend over \$250,000 on improvements to the remaining land as a condition of approving the development of infill townhouses on the lands which were formerly part of the rental complex. However, this provision was not given as a reason for their decision.

In making its decision, the Divisional Court awarded costs against the tenants in the amount of \$5,000. These costs were paid from the Tenant Defence Fund as directed by Council at its meeting of May 25, 2009. The tenants paid the legal costs of the appeal.

On December 17, 2009, the tenants made a motion seeking leave to appeal the Divisional Court decision. Leave was granted February 16, 2010.

The tenants’ associations at 50 Rosehill Avenue and 330 Spadina Road have both pledged to contribute \$2,000 each towards the costs of the appeal. An additional \$5,000 is required to complete the appeal, and for this reason, the tenants have requested a grant from the Tenant Defence Fund.

The tenants at 330 Spadina Road are supporting the tenants at 50 Rosehill Avenue because they are in a similar situation. Their site is located on the west side of Spadina Road, south of St. Clair Avenue West. Originally, it was solely occupied by a 23-storey apartment building containing 139 rental units, and included additional open land in what is now a separate building lot to the north (now 336 Spadina Road). In 2002, the Ontario Municipal Board approved Official Plan and By-law amendments to permit a 16-storey

residential condominium apartment building, and the site was severed to create two separate lots. A 14-storey, 45 unit residential condominium is currently being constructed on the former open land.

The 330 Spadina tenants have applied to the Landlord and Tenant Board (LTB) due to the permanent loss of landscaped open space and visitor parking, and their hearing is scheduled to resume on August 16, 2010. The tenants association at 330 Spadina has no direct role in the 50 Rosehill Court of Appeal matter, however, they have contributed \$2,000 towards the legal defence as the Court of Appeal decision may impact on the decision to be made by the LTB on their application.

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 appeal a decision of the Divisional Court arising originally from a tenant application to the Landlord and Tenant Board. 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 provision of the requested grant. Upon review, staff recommend providing a grant of up to \$5,000 for the following reasons:

1. The outcome of the appeal may set a precedent for other infill housing developments currently taking place in the City and in the future, such as at 330 Spadina Road. For this reason, it is in the City's interest to support the tenants in continuing to test the law in this regard, as it may help provide certainty and direction in future situations where the City approves infill developments on existing rental properties.
2. The tenants' request is strongly supported by the both the 50 Rosehill Tenants' Association (Balfour Square) and the 330 Spadina Road Tenants' association. Both have pledged to contribute \$2,000 each towards the costs of the appeal. The City is not being requested to fund the full cost, and through their financial support, the tenants have demonstrated significant commitment to this issue.
3. 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 (when calculated in 2009, the rent was \$1,466 and the benchmark was \$1,270). However, in this situation, financial need arises because the tenants and tenant association have already contributed significant funds for legal costs and cannot afford the full cost of the appeal.

4. 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 \$5,000 is in keeping with amounts that might otherwise be granted by the City for actions permitted by the by-law.

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