

Clause embodied in Report No. 7 of the Community Services Committee, as adopted by the Council of the City of Toronto at its meeting held on July 24, 25 and 26, 2001.

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Provincial Legislation for "Rent Roll Back"

(City Council on July 24, 25 and 26, 2001, amended this Clause by adding thereto the following:

"It is further recommended that:

- (1) the Province of Ontario be requested to:
 - (a) review the Tenant Protection Act and to roll back rents, in accordance with the Clause, or freeze rents until the review is completed; and*
 - (b) consider legislating mandatory reserve funds for building repairs for the owners of apartment buildings;**
- (2) the Community Services Committee be requested to develop a proposal for rent control mechanisms for the City of Toronto to implement;*
- (3) the City Solicitor be requested to resubmit, to the Community Services Committee, the report on the enforcement of property maintenance standards on landlords;*
- (4) a special evening session of the Committee of the Whole of City Council be held in the Fall of 2001, to hear from the public respecting the rental crisis in the City of Toronto; and*
- (5) the following motion, together with the Federation of Canadian Municipalities' National Housing Policy Options and Proposals, be referred to the Tenant Defence Sub-Committee for review with City staff and the development of a plan for advocacy and an appropriate strategy:*

Moved by Councillor Mammoliti:

"It is further recommended that the Province of Ontario be requested to consider establishing a shelter subsidy, such subsidy to be based on income.")

(City Council on June 26, 27 and 28, 2001, deferred consideration of this Clause to the next regular meeting of City Council scheduled to be held on July 24, 2001.)

(Clause No. 1 of Report No. 5 of The
Community Services Committee, entitled “Provincial Legislation
for ‘Rent Roll Back’”)

(City Council on May 30, 31 and June 1, 2001, deferred consideration of this Clause to the next regular meeting of City Council scheduled to be held on June 26, 2001.)

(Clause No. 7 of Report No. 4 of The
Community Services Committee, entitled “Provincial Legislation
for ‘Rent Roll Back’”)

The Community Services Committee recommends the adoption of the recommendations of the Tenant Defence Sub-Committee contained in the following communication (April 19, 2001) from the City Clerk:

Recommendations:

The Tenant Defence Sub-Committee recommends that:

- (1) Toronto City Council endorse the development and enactment by the Province of Provincial legislation for a Province-wide or City-wide “rent roll back” to rent levels consistent with 1998 CMHC averages for affordable rents in Toronto and/or the Province-wide prior to the introduction of the Tenant Protection Act in June 1998;
- (2) the three political parties at Queen’s Park be petitioned for their support for Provincial legislation to roll back rents in market rental housing;
- (3) the appropriate City staff be requested to report in August 2001 on various options for implementing a “rent roll back” for market rental apartments to levels consistent with 1998 CMHC averages for affordable rents in Toronto and/or Province-wide prior to the introduction of the Tenant Protection Act in June 1998; and
- (4) such report include, with the assistance of the Federation of Metro Tenants’ Associations, a comparison of such factors as inflation, wage increases, and municipal tax increases over the last 10 to 15 years.

Background:

At its meeting on April 18, 2001, the Tenant Defence Sub-Committee gave consideration to a communication (April 10, 2001) from Councillor Michael Walker, Ward 22 St. Paul’s, respecting the scope of Provincial powers within Ontario’s private rental housing market, specifically their power to legislate a rent roll back; and recommending:

- (1) that the Tenant Defence Sub-Committee recommend that Toronto City Council endorse Provincial legislation being developed for a Province-wide or City-wide “rent roll back” to rent levels consistent with 1998 CMHC averages for affordable rents in Toronto and/or Province-wide prior to the introduction of the Tenant Protection Act in June 1998;
- (2) that the three political parties at Queen’s Park be petitioned for their support for provincial legislation to roll back rents in market rental housing; and
- (3) that the appropriate City staff be requested to report on various options for implementing a “rent roll back” for market rental apartments to levels consistent with 1998 CMHC averages for affordable rents in Toronto and/or Province-wide prior to the introduction of the Tenant Protection Act in June 1998.

The following persons appeared before the Tenant Defence Sub-Committee in connection with the foregoing matter:

- Mr. Bob Gosschalk, President, Federation of North York Tenants’ Associations Inc.; and
- Mr. Dan McIntyre, Federation of Metro Tenants’ Associations.

(Communication dated April 10, 2001, addressed
to the Members of the Tenant Defence Sub-Committee
from Councillor Michael Walker,
entitled “Legality of Provincial Rent Roll Back”)

Recommendations:

It is recommended:

- (1) (a) that the Tenant Defence Sub-Committee recommend that Toronto City Council endorse Provincial legislation being developed for a Province-wide or City-wide “rent roll back” to rent levels consistent with 1998 CMHC averages for affordable rents in Toronto and/or Province-wide prior to the introduction of the Tenant Protection Act in June 1998; and
- (b) that the three political parties at Queens Park be petitioned for their support for provincial legislation to roll back rents in market rental housing; and
- (2) that appropriate City Staff be requested to report on various options for implementing a “rent roll back” for market rental apartments to levels consistent with 1998 CMHC averages for affordable rents in Toronto and/or Province-wide prior to the introduction of the Tenant Protection Act in June 1998.

Background:

Attached please find a copy of a legal opinion I requested in December 2000 regarding the scope of Provincial powers within Ontario’s private rental housing market, specifically their power to legislate a rent roll back.

The legal opinion indicates that the power to enact legislation to initiate a rent roll back is within the scope of Provincial powers. The report cites several specific examples to illustrate that point, most notably the case of *A&L Investments Ltd. v. Ontario* (“A&L”) in which the Ontario Court of appeal was considering a challenge to the Residential Rent Regulation Amendment Act, 1991, which retroactively invalidated rent increases and had the effect of reducing rents for the affected units. The Court of Appeal concluded that the reduction of rents was a valid exercise of Provincial power.

Members of this Sub-Committee are all too aware of the affordable housing crisis we are facing in our City and throughout our Province. Contrary to assumptions that “vacancy decontrol” would trigger an increase in the production of new rental apartments, production of rental apartment units is down 97 percent from average annual production between 1989 to 93 and the vacancy rate in this City is down to 0.6 percent. This means that tenants who can no longer afford their current rent have nowhere to turn. One quarter of Toronto’s tenants already spend 50 percent or more of their annual income just paying their rent. The reality for these people is that one more Above-Guideline Rent Increase will force them out on the street, i.e., an eviction notice by another name.

Whether as a result of vacancy decontrol, above guideline rent increases, demolition, or conversion to condominiums, we are experiencing the disappearance of hundreds of thousands of affordable rental apartments in our City. That means tens of thousands of new applicants for social housing being added to an ever expanding waiting list which already has 100,000 people on it. Furthermore, no new social housing has been built since 1995. We need a strategy to protect tenants who are currently living in market rental buildings stay there, if for no other reason than to prevent a further increase in the demand for social housing and just because it's their home.

The most expedient way of doing this is for the Province of Ontario to pass legislation to roll back rents in market rental buildings to levels consistent with CMHC averages for affordable rents in Toronto and/or the Province of Ontario prior to the introduction of “vacancy decontrol” and the Tenant Protection Act in June 1998.

Restoring Rent Control is no longer enough by itself. Under the current regime, by 2003/2004 most of the rental housing in our City will be out of reach for ordinary hard working tenants unless they are prepared to pay 50 to 60 percent of their annual income on rent. Therefore more drastic intervention on the part of government is necessary if we are to get rents in line with peoples’ income. We need a Provincial Government that will roll back rents to affordable levels and then bring in new Rent Control Legislation to ensure that rents remain affordable and to drive unscrupulous landlords and speculators out of the rental housing market.

I urge members of the Tenant Defence Sub-Committee to endorse the above-noted recommendations on behalf of the 1,200,000 renters who live in the City of Toronto, and who continue to face skyrocketing rents, economic hardship and the threat of eviction thanks to vacancy decontrol and the *Tenant Protection Act*.

Toronto has always been an innovator and leader on the issue of tenant rights. It is time again for us to lead. One million two hundred thousand tenants expect no less!

(Communication dated April 5, 2001, addressed to
Ms. Mary-Ellen Bench, Director, Municipal Law, City Legal Services
from Councillor Michael Walker, Ward 22, St. Paul's)

I acknowledge receipt of your letter dated January 25, 2001, which was received by my office on April 4, 2001, regarding the question of whether a City or Province-wide rent roll back was within the scope of provincial powers. The report was informative and I appreciate the variety of examples you provide which indicate that a rent roll back would be a legitimate use of Provincial power.

Further to our conversation earlier today, I wish to reiterate that this report was not received by my office until April 4, 2001. As staff was requested to report back to the Tenant Defence Sub-Committee on this issue, I would have assumed that once prepared, the report would have been put on the next agenda of that Sub-Committee.

I plan to forward the report to Ms. Merle MacDonald for inclusion on the Tenant Defence Sub-Committee agenda for its meeting of April 18, 2001. Once again thank-you for your assistance.

(Communication dated January 25, 2001, addressed to
Councillor Michael Walker from Ms. Mary Ellen Bench, Director,
Municipal Law, City Legal Services)

You have asked for an opinion as to whether Provincial legislation to initiate a Province-wide or City-wide rent roll back would be legal and within the scope of Provincial powers.

The courts have considered the issue of whether the Province has the power to regulate residential rents on numerous occasions. However, there has been only one case, *A & L Investments Ltd. v. Ontario* ("A & L") in which the court addresses the issue of whether the Province's power to regulate residential rents includes the power to reduce rents. In that case, the Ontario Court of Appeal was considering a challenge to the *Residential Rent Regulation Amendment Act, 1991*, which retroactively invalidated rent increases, and had the effect of reducing the rents for the affected units.

In *A & L*, the Court of Appeal concluded that the reduction of rents was a valid exercise of provincial power. In reaching their conclusion, the Court paid particular consideration to the issue of whether the rent reduction amounted to an expropriation of the landlord's property. On that issue, the court stated:

"...while the 1991 Act voids orders obtained by landlords and in that sense takes their property, that property is not transferred to the tenants. At most, the legislation creates economic advantages for tenants. The 1991 Act does not effect an expropriation but rather regulates in a way that affects both landlords and their tenants. The fact that the effect on landlords is said to be significant and, indeed, unusual in its retroactivity, cannot turn the legislation into an act of expropriation."

Further evidence of the Province's power to reduce rents may be found in the *Rent Control Act, 1992* (the "RCA"). The RCA, in effect from August 10, 1992 to June 17, 1998, provided for rent reductions where the landlord failed to adequately maintain the unit or common areas. The rent could also be reduced if the landlord's cost of operating the unit decreased, or if the landlord reduced or discontinued services and facilities provided to the tenant. Under the RCA, the rent of a rental unit could be permanently reduced, or reduced for a specified period of time. The rent for the rental unit could also be frozen indefinitely, pending repairs to be completed by the landlord, or for a specific period of time, usually as a sanction for a contravention of the legislation.

Finally, the current rent regulation legislation, the *Tenant Protection Act, 1997* provides for an automatic rent reduction for the tenant where the landlord's municipal taxes are reduced by more than 2.5 percent.

In conclusion, as evidenced by the examples outlined above, the power to enact legislation to initiate a rent roll back is within the scope of Provincial powers.

I hope this information is helpful. If you have any further questions regarding this issue, please contact Mr. James Gorham at 416-392-8864.

(Communication dated December 18, 2000, addressed to
Mr. Phil Brown, General Manager, Shelter, Housing and Support
from Councillor Michael Walker)

I am writing to request information and a legal opinion regarding the scope of Provincial powers within Ontario's private rental housing market, specifically the power to legislate a rent freeze or a rent roll back.

We are in a housing crisis in this City and we are on the verge of a housing disaster. The Tenant Protection Act has failed tenants and it has failed municipalities who have to deal with the fallout – evictions, an unprecedented demand for social housing and homelessness. Vacancy decontrol has and continues to drive rents through the roof, to the point where it is common to see the rent for a one bedroom apartment jump by 30 to 50 percent from one tenant to the next.

The Tenant Protection Act promised to protect the affordability of rents for tenants who stay in their apartments by imposing an annual "guideline rent increase" – a ceiling on annual rent increases. The legislation's fine print, however, provided landlords with a whole range of loopholes and caveats which are used to increase rents well beyond what is allowed by the guideline. The allowance of Above-Guideline Rent Increases of up to 7 percent for repairs and capital expenditures, another 3 percent annually for property tax increases due to CVA, 3 percent on top of that for hikes in utilities costs and by allowing landlords to create new fees and charges not previously allowed under the old law.

Contrary to assumptions that "vacancy decontrol" would trigger an increase in the production of new rental apartments, production of those units is down 97 percent from average annual production between 1989 to 93 and the vacancy rate in this City remains stagnant at 0.6 percent. This means that tenants who can no longer afford their current rent have nowhere to move. One

quarter of Toronto's tenants already spend 50 percent or more of their annual income just paying rent. The reality for those people is that one more Above-Guideline Rent Increase will force them out on the street. You and I know that this is not scare mongering. We have both seen it happen.

Right before our eyes, whether as a result of Vacancy Decontrol, Above Guideline Rent Increases, demolition, or conversion to condominium, we are experiencing the disappearance of hundreds of thousands of affordable rental apartments. That means tens of thousands of new applicants for social housing, being added to a waiting list which, as I understand, already has more than 90,000 people on it, many of whom have been waiting for up to 12 years to get an apartment. We need a new strategy to help tenants who are currently in market rental buildings stay there, in order to prevent further increase in the demand for social housing of which none is being built now.

Considering the Harris Government's openly hostile attitude towards tenants and its short sighted and deplorable actions in dismantling Rent Control and driving a stake through the heart of the tenants movement, it appears as though the situation is only going to get worse, at least until the next Provincial election at which time there may be no affordable housing left. In light of this, it might be necessary for a new Provincial Government to instigate a rent roll-back of all rents in the Province of Ontario, or at least the major urban centres, in order to restore rents to affordable levels.

My question is, would such an action be legal and within the scope of Provincial powers? I believe it would be, citing the actions of Premier Rae's government in enacting the Social Contract in 1993, as a recent precedent.

I am requesting that appropriate staff from the Shelter, Housing and Support Division and the City of Toronto Legal Division report to the February meeting of the Tenant Defence Sub-Committee as to whether or not Provincial legislation to initiate a Province-wide or City-wide rent roll back is both legal and within the scope of Provincial powers and, if so, how specifically could it be accomplished?

If you have any questions or require further information, please contact either myself or Neil Carter at 392-7906. I appreciate your assistance in this matter.

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
- Councillor Pam McConnell, Ward 28, Toronto Centre-Rosedale.

(City Council on May 30, 31 and June 1, 2001, had before it, during consideration of the foregoing Clause, the following communication (May 31, 2001) from Councillor Howard Moscoe, Eglinton-Lawrence:

Unfortunately, I am unable to attend today's Council meeting.

Both my constituents and I have an interest in Clause No. 7 of Report No. 4 of The Community Services Committee.

I would appreciate it if this item could be referred back to the Committee so that we can deal with it there.

Thank you for your anticipated co-operation.)

(City Council on July 24, 25 and 26, 2001, had before it, during consideration of the foregoing Clause, a communication (June 26, 2001) from Ms. Barbara Hurd, Chair, Federation of Metro Tenants' Associations in support of the recommendation calling for a rent roll back to 1998 levels.)