

# CD13.14

## Appendix A

### Appendix A

#### City of Toronto Comments on Proposed Amendments to the *Residential Tenancies Act, 2006*

**June 6, 2016**

#### **Background:**

The City of Toronto supports the Province of Ontario's initiatives to encourage small landlords and private homeowners to participate in the rental housing market. The primary rental market in Toronto is increasingly unaffordable and the availability of rental housing is low. According to the Canada Mortgage and Housing Corporation (CMHC) Housing Market Information Portal, in October 2015, the average rent for a two-bedroom apartment in Toronto was \$1,301, and the vacancy rate remains at only 1.6 per cent. CMHC's 2011 assessment of core housing need<sup>1</sup> indicated that 21 per cent of Toronto households (32.9 per cent of renters) are in core housing need and 73.6 per cent of renters in Toronto do not meet the standard for housing affordability, meaning they spend more than 30 per cent of annual before-tax income on housing.

Strategic Action 8 of the *City of Toronto Strategic Actions 2013-2018*, Support Affordable Housing, focuses on implementing and renewing Housing Opportunities Toronto in order to assist residents to access a range of affordable housing options, support the development of healthy and diverse communities, and generate economic development. As well, the City's Official Plan policies encourage the provision of a full range of housing types in terms of form, tenure and affordability. Secondary suites, or second units, are an important part of this full range of housing. Not only do they increase rental housing stock in the city and provide additional accommodation for tenants, they also improve the affordability of homeownership for individuals who are able to build secondary suites in their homes.

Secondary suites may be more affordable for tenants than other housing types, but this is not always the case. Affordability must be a key consideration in any initiatives to create more rental opportunities for Torontonians. While it is necessary to increase the rental housing stock in the city, the stability of an individual's tenancy is influenced by the affordability of their housing. The complementary second unit initiatives under Ontario's Long-Term Affordable Housing Strategy will be critical in achieving the goals of the proposed *Residential Tenancies Act, 2006* (RTA) amendments.

#### **Principles:**

The proposed changes to the RTA to encourage small landlords to provide rental housing were reviewed with the following principles in mind:

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<sup>1</sup> "A household is in core housing need if its housing does not meet one or more standards for housing adequacy (repair), suitability (crowding), or affordability and if it would have to spend 30 per cent or more of its before-tax income to pay the median rent (including utilities) of appropriately sized alternative local market housing. Adequate housing does not require any major repairs, according to residents. Suitable housing has enough bedrooms for the size and make-up of resident households. Affordable housing costs less than 30 per cent of before-tax household income." (CMHC, Housing Market Information Portal).

**Fairness and equity:** Any changes made to the RTA must be fair for both landlords and tenants. The proposed changes in the discussion document consider and address the concerns of both landlords and tenants.

A tenant concern that is not addressed in the discussion document is discrimination, which is recognized as an ongoing issue, particularly by small landlords who live in the same dwelling as their rental unit. Tenant education on the Human Rights Code and its applicability to rental housing will help to increase meaningful housing opportunities in Toronto.

It should be noted that the suggested revisions to the RTA will likely not have a significant impact on the greatest challenge faced by low-income renters in Toronto, which is accessing affordable rental units.

**Accessibility:** Any changes made to the RTA must be accessible to tenants, meaning they must be presented in plain language in a variety of formats, including materials in other languages than English and auditory materials for individuals with visual impairments and challenges with literacy. A chart of current regulations and proposed changes would be helpful in order to clearly understand what will change and the impact of that change. The changes must also be communicated broadly. Many individuals will not know about the proposed changes to the RTA and those who do may not know where to access information that is pertinent to them. Ontario interacts with tenants through a wide variety of channels and should capitalize on these connections to disseminate information on the proposed changes, as well as tenant rights and responsibilities and tenant support services more generally.

The City of Toronto's comments on the proposed amendments to the *Residential Tenancies Act, 2006*, subject to Council approval, follow.

## **Part I: Encourage Small Landlords to Provide Rental Housing**

### **1. Increasing access to Landlord and Tenant Board (LTB) remedies**

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#### **1.1 Allow landlords to pursue unpaid utility arrears at the LTB during a tenancy**

##### **Comments**

The City supports this proposed change, which give landlords greater recourse to collect monies owing and results in less duplication in procedure. Repayment of utility arrears and other utility charges (including service fees, connection fees, late payment interest and infrastructure charges) and negotiation of a repayment agreement are reasonable remedies; termination of tenancy should always be a last recourse. Landlords have indicated that bearing the cost of utility arrears causes a financial strain. In exploring this proposed change further, it would be helpful to understand the extent of this concern and review programs that improve the affordability of utilities for vulnerable tenants and homeowners in the province, such as the Low-Income Energy Assistance Program (LEAP) and the Ontario Electricity Support Program (OESP).

If this change is made, clarification will be needed on the potential impact on the definition of arrears for the purpose of entering data into the Province-wide Rental Arrears Database for social housing.

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## 1.2 Explore whether to allow landlords to pursue certain issues (e.g., rental arrears, utility arrears, damage) at the LTB for up to 12 months after a tenancy has ended

### Comments

The City supports this proposed change insofar as the proposed 12-month limitation period does not replace, derogate from, or otherwise affect the current six year limitation period in which landlords may commence an action for arrears of rent under s. 17(1) of the *Real Property Limitations Act, 1990* nor the two year limitation period under the *Limitations Act* to recover damages associated with the failure to pay for utilities. Not only does the six year limitation period provide landlords a longer window in which to commence proceedings for rental arrears, but it gives landlords greater opportunity to connect with the household and pursue housing stability / eviction prevention measures before commencing an action for arrears. By contrast, if the proposed change is intended to replace the six year limitation period with a 12-month limitation period, the much shorter window would force many landlords to commence an action for arrears sooner and before they could pursue housing stability / eviction prevention measures in order to prevent the limitation period running out.

It is reasonable for small landlords to be able to recover lost revenue related to rental and utility arrears, damages and other costs incurred for a one-year period after the tenancy has ended. This change will help to mitigate the financial risks that landlords assume when renting their properties. This proposed change supports the principle of equity, since tenants have access to LTB remedies for up to 12 months after a tenancy has ended.

If a tenant abandons their unit and leaves no forwarding address, it may be difficult for landlords to seek remedies at the LTB. In general, abandonment is a risk in providing rental housing and this can best be addressed through providing easily accessible information to tenants on their rights and responsibilities and on support services available to tenants. Very rarely do issues with housing arise in isolation. Arrears and the threat of eviction are often overwhelming for people who are managing other personal issues at the same time. If an individual believes they have no options and no supports, abandonment can begin to look like the only available solution. The enforcement of this proposed change must be explored further, including what penalties would apply for individuals who cannot be reached during the 12-month period.

The City recommends that every notice and order from the LTB include an information sheet on tenant supports in plain and accessible language, providing phone numbers for all services listed, including 211, Housing Help Centres, financial support services such as rent bank programs and energy assistance programs, tenant information services and Legal Aid services. A simple,

accessible fact sheet on landlord and tenant rights and responsibilities should be made available in all Ontario communications with landlords and tenants. Other channels of communication should also be explored. For example, all Service Ontario offices could provide tenant information.

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### 1.3 Allow landlords to apply to the LTB to resolve landlord-tenant disputes without seeking to terminate the tenancy

#### **Comments**

The City requests additional information on this proposed change, including:

- How the termination and mediation processes will interact;
- Whether this change will impact the termination process; and
- What enforcement would be attached to the new process.

A chart of the current process and proposed new process, which highlights the differences, would provide an accessible means of understanding the implications of this proposed change. It will also increase efficiency and clarity for tenant support agencies when explaining the proposed changes to tenants.

## **2. Making processes more fair**

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### 2.1 Require tenants to disclose any issues that they intend to raise at rental arrears eviction hearings to the landlord prior to the hearing

#### **Comments**

The City recommends additional consultation on this proposed change. This proposal could be problematic if it denies tenants the ability to dispute other issues at the LTB. Since many tenants do not have a good understanding of their rights and responsibilities, they may not raise issues such as poor maintenance until the day of their hearing when they meet with Duty Counsel. It is important that any changes to the proposed RTA not limit options for tenants, particularly later in a termination process.

The intent of this proposed change is to reduce delays due to adjournments. Ontario states that the change will ensure tenants are aware of their rights and continue to have the opportunity to raise their concerns. In practice, it is anticipated that many tenants will not be aware of their responsibility to disclose and may lose their right to raise other legitimate issues. The City recommends that this proposal should be a best practice, accompanied by tenant education, not a requirement.

As noted under proposal 1.2, options for tenant education directed at increasing tenant's awareness of their rights and responsibilities, particularly related to RTA and LTB processes, should be further explored. The City reiterates the recommendation that an information sheet on tenant supports, in plain and accessible language, be developed and attached to all notices and orders from the LTB and other communications from Ontario to tenants and landlords.

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## 2.2 Clarify that only motions that indicate the full amount was paid will be accepted and treated as a "stay" of the eviction order

### **Comments**

The City supports this proposed change, but requests clarification on whether an agreed upon amount that is not the full amount would also be accepted and treated as a “stay”.

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## 2.3 Explore whether any changes should be made to the process for appealing decisions of the LTB to the Divisional Court

### **Comments**

The City supports, in principle, exploring this change, but additional information is required, including what specific changes are being recommended, in order to understand the potential impact of any amendments. The City requests further opportunity for community consultation and discussion when specific recommendations have been made.

Toronto Community Housing has identified that, as the City's largest social housing landlord, this change could be beneficial. A proposed change in which parties no longer have an automatic right of appeal from the LTB to the Divisional Court, but that leave to appeal from the LTB must first be granted by the Divisional Court may reduce the large amount of resources expended by landlords in defending unmeritorious appeals of LTB decisions brought by tenants. The Divisional Court also expends considerable resources in hearing these appeals, which contributes to ongoing judicial backlog and impairs access to justice for landlords and tenants.

It is also important to recognize that should leave to appeal be required, this would not result in a system where tenants have no right to review decisions of the LTB. Rather, the Statutory Powers Procedure Act and LTB Rules already provide that tenants may request that the LTB reviews a previous LTB order to correct serious errors of fact or law within 30 days of the original order; beyond the 30 days, tenants may also request an extension of time to request to review an order. This functions as a form of appeal process that is more powerful than the Divisional Court's review to the extent that the Court, on appeal, is limited to hearing questions of law only.

Alternately, Ontario could explore the creation of a more efficient and effective mechanism in which landlords bring motions to the Divisional Court requesting that appeals of LTB decisions be dismissed because they are devoid of merit.

### **3. New protections for landlords and tenants**

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#### **3.1 Explore whether to allow landlords to terminate a tenancy based on violation of no-smoking provisions in tenancy agreements**

##### **Comments**

The City supports further exploration of this proposed change. Recognizing the harmful effects of second-hand smoke, housing providers are introducing smoke-free buildings (understanding that tenants may smoke elsewhere). While landlords may already terminate a tenancy for smoking, they must show that the tenant has caused undue damage, seriously impaired the safety of any person, or substantially interfered with the reasonable enjoyment of the landlord or other tenants. This change would remove this requirement and base termination on breach of the agreement. This would support housing providers' efforts to create and maintain smoke-free buildings. However, this proposed change has the potential to be misused to discriminate against tenants.

Areas for follow-up include clarifying:

- What constitutes a violation;
- How many violations of a no-smoking agreement are grounds for eviction;
- What constitutes adequate proof that an individual was smoking and who carries the burden of proof;
- Where no-smoking provisions could apply on a property;
- Rules around having guests who smoke; and
- How any proposed changes would interact with human rights law, for example, whether exemptions would have to be made for individuals that use medical marijuana or smoke because of other health, mental health and addictions challenges.

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#### **3.2 Explore whether to allow landlords to prohibit pets in tenancy agreements in small buildings where the landlord also resides**

##### **Comments**

The City generally opposes the proposed change, although appreciates the interest in further exploration of the issue. The proposal as is, is broad and open-ended and may have substantial, negative implications if approved. Many tenants have pets and report difficulty accessing rental

units because of their pets. This change may significantly impact access to housing and may also lead to more pets being abandoned. Many pets cause no harm or disruption to individuals in adjoining units, and often measures may be taken to minimize or ameliorate any potential effects.

Areas for follow-up, if the option is pursued, include clarifying:

- What specific concerns are being raised about pets;
- Can these concerns be addressed through other means (e.g. ventilation, pet damage deposit);
- What pets would be considered more problematic and subject to a prohibition;
- What regulations will be put in place to ensure service animals are exempted from any prohibition on pets, including service animals for disabilities that are not readily apparent such as therapy animals;
- What is meant by “small buildings where the landlord also resides” (for example, could a new regulation be applied in large and mid-size buildings where the landlord also resides);
- Whether different provisions are required for shared spaces;
- What constitutes adequate proof that the landlord also resides in the building or would be affected by certain pets; and
- Instead of a blanket prohibition, if it would be possible to consider generally allowing pets, but permitting owners to apply for a special time-limited exception where certain criteria can be met.

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### 3.3 Explore opportunities to protect Ontario tenants from the potential health-related impacts of radon

#### **Comments**

The City supports further exploration of this proposed change. The proposal to explore radon testing and radon safety, focusing currently on homes with basements and basement apartments, may have a regulatory and financial impact on housing providers with townhouses or scattered houses and a potential financial impact on other small landlords. The City will need to review the housing portfolios of social and alternative housing providers to adequately respond to the potential impact of this proposed change.

The City recommends further review to also identify impacts of potential displacement of tenants due to any regulatory changes around radon safety in rental housing.

## **4. Business and operational efficiencies**

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4.1 Allow emailing of certain landlord and tenant notices, upon consent of both

### **Comments**

The City requests additional information on this proposed change, including:

- How consent will be delivered and confirmed; and
- Whether there will be a requirement to renew consent.

Notice of termination should not be delivered via email.

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4.2 Further clarify provisions for substantial compliance with the RTA with respect to the content of certain forms, notices and other documents in order to reduce delays caused by technical, non-substantive issues on forms and notices

### **Comments**

The City supports this proposed change. Toronto Community Housing (TCHC) has identified that significant costs and delays are caused by technical and non-substantive issues on forms and notices. For example, in a number of cases where TCHC brought an L2 Application to end a tenancy, staff forgot to check a box on the application form indicating that there would be a schedule attached, even though the schedule itself was included with the application form. Upon discovering the mistake at the LTB hearing, the presiding member gave the option of either withdrawing the application or having it dismissed on account of this minor deficiency, despite there being no suggestion that the tenant had either not received the schedule or not been given notice of the issues raised in the application.

Where the parties' forms, notices, and other documents substantially comply with the RTA and there are no fundamental justice or procedural fairness issues raised by the relevant deficiency, the LTB should have jurisdiction to hear the matter without delay.

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4.3 Allow landlords and tenants to file unsworn statements in support of application and motions, rather than affidavits



## **Comments**

Although further exploration of this proposed change is recommended, the City does not currently support this proposal without further clarification and information. There is concern that this change could eliminate criminal or civil penalties and/or other legal remedies that could result if a party swears a false affidavit, but which are not available in the case of a party who makes a false unsworn statement. These penalties and remedies have significant deterrent effects and play an important role in promoting truth-telling and the administration of justice in LTB matters.

Further consideration may be required to determine whether unsworn statements would be viewed as evidentiary at LTB hearings.

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### 4.4 Allow the LTB to combine a conditional order with a subsequent eviction order to simplify enforcement

## **Comments**

The City supports this proposed change, as long as combined orders are communicated in clear and accessible ways to tenants to reduce any possibility of confusion.

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### 4.5 Allow the LTB to include payments owing for damage from prior mediated agreements in eviction orders

## **Comments**

The City supports this proposed change.

## **Part II: Rent Increase Guideline**

The guideline formula is calculated based on the average Ontario Consumer Price Index (CPI) over a 12-month period (June to May). The guideline applies to all residential buildings occupied prior to November 1, 1991. Buildings first occupied after this date are exempt from the guideline. In 2012, the RTA was amended to ensure that the annual rent increase guideline is not more than 2.5 per cent. The rent increase guideline for 2016 is 2.0 per cent.

## Comments

While the guideline formula is fair, even a 2.5 per cent increase can decrease the affordability of housing for some tenants. The City recommends that the annual guideline increase remain capped at 2.5 per cent. It should be noted that many, but not all, social and affordable housing providers are exempt from the Rent Increase Guideline.

The City reiterates the City Council decision from December 16, 17, and 18, 2013 (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX36.2>), in which City Council requested Ontario to:

- Discontinue the exemption pertaining to rent increases for rental housing built or occupied after November 1991;
- Institute an automatic rent freeze in rental buildings for non-compliance with work orders;
- Collaborate with the City to set up an automated system that would allow the Landlord and Tenant Board direct access to work orders; and
- Amend the City of Toronto Act to enable the City to improve the quality of rental housing in Toronto through measures such as rent freezes and vacancy control.

## Other matters related to the RTA

### 1. Above Guideline Rent Increases

The City provides a Tenant Defence Fund (TDF) program aimed at protecting the supply of affordable housing in Toronto. Tenant groups may apply for grants to dispute Above Guideline Rent Increase (AGI) applications and applications for demolition and/or conversion of rental properties, and access outreach and organizing support through the program. As a result of working with tenants accessing the TDF program, the City is concerned that AGIs are impacting the affordability of rental housing in Toronto.

The City requests that Ontario review the Above Guideline Rent Increase regulations and provide an opportunity for public consultation on the impact of AGIs to ensure these regulations are not compromising housing affordability in the province. In addition, the City requests the following areas related to AGIs be reviewed:

- The applicability and appropriateness of allowing AGIs in buildings with significant reserves and the potential for the LTB to review building reserves within the AGI application process as a criterion for awarding an AGI;
- Recognizing that the weighted useful life of capital expenditures for which AGIs were awarded will begin to expire in the next several years, the possibility of creating publically available lists of buildings where tenants are entitled to a rent reduction and a process for how tenants can receive these reductions given turnover in tenancy; and

- In response to community concerns, the frequency of AGI applications made for building envelope work that is cosmetic in nature and used in pursuit of creating luxury buildings, reducing the supply of affordable rental housing.

## **2. Improving efficiencies at Landlord and Tenant Board hearings**

Greater efficiencies and streamlining may also be identified with respect to the scheduling of LTB hearings. Recent changes have resulted in many parties or appellants being required to attend the Board to have their matters considered the morning of a certain date, without specific times being allotted. Parties are frequently required to wait for up to an entire day for their hearing to commence, and often these delays result in matters being carried over to another date in the future. While there may be resource implications, it is recommended that further attention be given to setting more specific windows of time (e.g. morning or afternoon slots) to ensure that cases may be dealt in a more direct and predictable way.

## **3. Protecting tenants from landlords acting in bad faith**

One concern that continues to be brought to the attention of City staff relates to the legitimacy of evictions under the RTA for use by owners or their immediate family. This is likely to be more significant for units within homes and small family-operated apartments. The City requests Ontario review regulations around terminating a tenancy for personal use of the unit, specifically with regard to enforcement and penalties for landlords who act in bad faith. Currently, landlords may evict tenants if they require the use of the apartment in good faith for themselves or their family members to reside, or if the landlord has entered an agreement of purchase and sale, and the purchaser requires the use of the apartment in good faith for themselves or their family members to reside.

In cases where tenants have been evicted, and the landlord does not move in, the burden of proof to demonstrate that the landlord has not acted in good faith can be difficult for tenants to meet, and even where compensation has been ordered by the LTB, it can be difficult to enforce. Strengthening these provisions would provide greater protection for tenants in expensive real estate and rental markets like Toronto.

## **4. Tenant access to Legal Aid Ontario**

In 2015, the City conducted extensive interviews with tenants and individuals who are experiencing homelessness to understand a breadth of individual experiences with Toronto's rental housing market and develop an Eviction Prevention Strategy. A common barrier to managing rental housing issues and preventing eviction identified by individuals who were interviewed was difficulty accessing legal support. The City requests Ontario strengthen tenant issues Duty Counsel at the LTB and to increase funding to Legal Aid Ontario to provide support on tenant-specific issues such as AGIs and evictions.